TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 14,528. 15

LIZZIE STEARNS BLEECKER AND ELSIE L. BLEECKER, PETITIONERS,

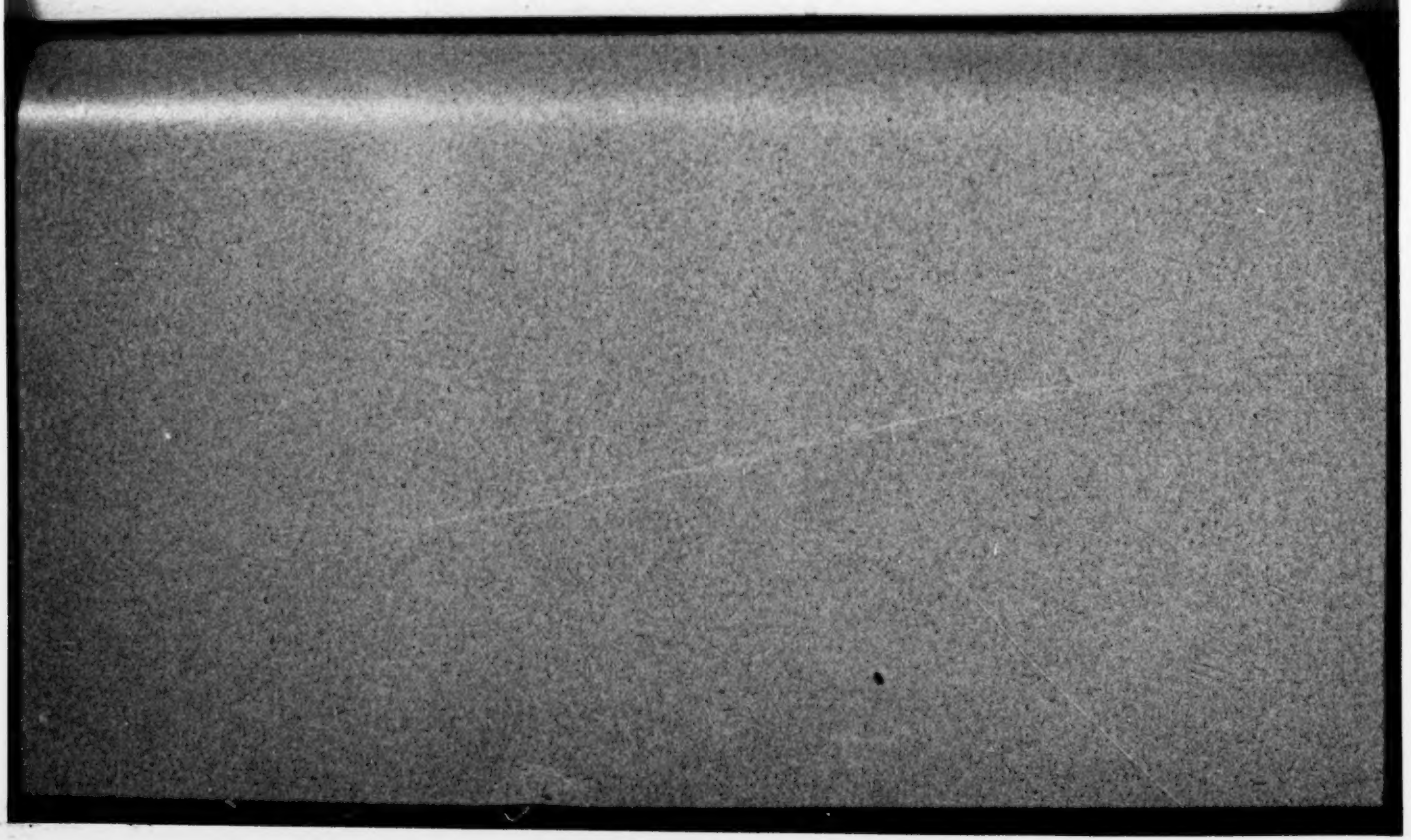
vs.

THE STEAMSHIP "KENSINGTON," HER ENGINES, &c., THE INTERNATIONAL NAVIGATION COMPANY, CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED OCTOBER 5, 1899.
CERTIORARI AND RETURN FILED NOVEMBER 6, 1899.

(17,528.)



(17,528.)

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1

U. S. District Court,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE S. BLEECKER *et al.*

AGAINST

The Steamship "KENSINGTON," her engines, tackle, &c.

2

STATEMENT.

1898.

Feb. 9. Libel filed.

Feb. 9. Monition issued returnable March 1, Steamship *Kensington* attached.

Feb. 10. Order entered releasing vessel from custody, Steamship released.

Feb. 24. Answer of International Navigation Company, claimant of S. S. *Kensington* filed. 3

June 8. Cause tried before the Honorable Addison Brown, U. S. District Judge.

July 6. Opinion, Brown, J. Decree for libellants for the equivalent of 250 francs each with interest and costs.

Oct. 10. Final decree entered.

Oct. 29. Notice of Appeal by libellant filed.

Nov. 1. Notice of Appeal by claimant filed.

4

5 DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER

AGAINST

6 The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY.

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York:

The libel and complaint of Lizzie Stearns Bleecker and Elsie L. Bleecker, all of the State of New Jersey,
7 against the Steamship *Kensington*, her boilers, engines, tackles, apparel and furniture in a cause of action of contract, civil and maritime, of a nature hereinafter more specifically set forth, alleges as follows:

FIRST.—On information and belief that at all the times hereinafter mentioned the International Navigation Company was and still is a foreign corporation, duly organized and existing under the laws of the State of New Jersey, and at all said times carried on and
8 still carries on business as a common carrier, by water, of merchandise and passengers between the Port of New York in the United States of America and the Port of Antwerp in the Kingdom of Belgium, by various steamers, and among others the aforesaid steamship *Kensington*, owned or leased by them, known collectively as The International Navigation Company.

SECOND.—Heretofore, and on or about the 9th day of December, 1897, the said The International Navigation Company, entered into a contract with the

libellants, embraced in a passage ticket then duly de- 9
livered by them to said libellants and thereby, for a valuable consideration to them paid by the libellants, agreed to and with the libellants to carry and transport the libellants from the port of Antwerp in the Kingdom of Belgium to the port of New York in the United States of America by the said Steamship *Kensington*, and by said steamship to carry and transport with safety to said port of New York, and there deliver to the libellants, in good order and condition, the personal luggage or baggage of the libellants. 10

THIRD.—On or about the 11th day of December, 1897, the libellants took passage at Antwerp for New York upon said steamship *Kensington*, then lying at said Antwerp, bound for said port of New York, and in pursuance of the terms of the contract between them and on or about said day last mentioned delivered to the said The International Navigation Company, on board of said steamship at Antwerp, the wearing apparel and other personal luggage or baggage of 11
libellants, to be transported as aforesaid by said steamship to said port of New York, and there delivered to the libellants in good order and condition, and thereupon said steamship, her boilers, engines, tackle, apparel and furniture became charged for the faithful performance of said contract.

FOURTH.—Said steamship sailed from said port of Antwerp with libellants and their luggage or baggage on board on or about the 11th day of 12
December, 1897, for the port of New York, and where said steamship arrived in safety on or about the 23rd day of December, 1897, but owing to the careless, negligent, unusual, insufficient and improper manner in which the libellants' baggage was stored, and the careless, negligent and inefficient manner in which other merchandise on said steamship was stored, and the want of proper care on the part of the Master of said steamship, his officers and crew and persons employed by him or them, the said personal lug-

gage or baggage of libellants was in great part utterly ruined, whereby libellants were severally damaged in the sum of two thousand ($2,000) dollars.

FIFTH.—The said steamship is a foreign vessel and is about to leave the United States and the libellants will, after the said steamship has left the United States, be without remedy against said steamship, her boilers, engines, tackle, apparel and furniture.

SIXTH.—The said steamship is at present within the jurisdiction of the United States District Court for the Southern District of New York.

SEVENTH.—All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, the libellants pray that process in due form of law, according to the course of this Court in cases of admiralty and maritime jurisdiction may issue against said steamship *Kensington*, her boilers, engines, tackle, apparel and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid and this Honorable Court will be pleased to decree payment of the damages aforesaid with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

ROGER FOSTER,
Attorney and Proctor for Libellants,
35 Wall Street,
New York.

LIZZIE STEARNS BLEECKER.

Sworn to before me this 8th day of February, 1898.

CHARLES D. M. COLE,
Notary Public,
New Jersey,
Morris County.

[SEAL.]

[Endorsed :]—Libel.—February 9, 1898.

17

To the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York.

The answer of the International Navigation Company, claimant of the steamship *Kensington*, her boilers, etc., to the libel of Lizzie Stearns Bleecker and Elsie L. Bleecker against the said steamship, her boilers, etc. in a cause of contract civil and maritime, respectfully represents:

18

FIRST.—The claimant admits that it is a foreign corporation of the State of New Jersey carrying on business as a common carrier of merchandise and passengers between the port of New York and the port of Antwerp, Belgium, by various steamships, among others the steamship *Kensington* as stated in the first article of the libel.

SECOND.—The claimant admits that on or about December 9th, 1897, it entered into a contract with the libellants, expressed in a passage ticket, whereby for a valuable consideration it agreed to carry and transport them from the said port of Antwerp to the said port of New York by the said steamship *Kensington*, together with their personal luggage but it denies that it agreed to transport the said luggage with safety and to deliver it in good order and condition except so far as that duty is to be implied from its engagement in the said ticket contained, and in accordance with its provisions.

19

20

THIRD.—The claimant admits that on or about December 11th, 1897, the libellants took passage on the said steamship *Kensington* at Antwerp, and delivered to it on board of said steamship personal baggage to be transported to New York and there delivered to them, in accordance with the provisions of their ticket.

FOURTH.—The claimant admits that the said steamship sailed from Antwerp with the libellants and their baggage on or about December 11th, 1897, and arrived

21 at the port of New York on or about the 23rd day of December, 1897, and that the libellants' baggage was very greatly damaged: but denies that the same was damaged by reason of insufficient and improper stowage, and alleges on the contrary that the same was injuried by reason of the violence of the seas and the unusual extraordinary weather through which the said steamship *Kensington* passed.

FIFTH.—The claimant admits that the said steamship
22 is a foreign vessel and was about to leave the United States, as stated in the fifth article of the libel.

SIXTH.—The claimant admits that the said steamship was at the time the libel was filed within the jurisdiction of the United States and of this honorable Court, as stated in the sixth article of the libel.

SEVENTH.—The claimant admits the allegations contained in the seventh article of the libel except the statement that all and singular the premises are
23 true.

EIGHTH.—And for a separate and independent defence, the claimant alleges that it was part of the contract of transportation entered into between it and the libellants that all questions arising under the same should be settled according to Belgium law with reference to which the contract was made, and that the said contract contained a provision which is valid under the law of Belgium to the effect that the shipowner
24 should not be liable for loss or injury to the passenger or his baggage arising from perils of the seas, rivers or navigation, or from any act, neglect or default of the ship owner's servants.

NINTH.—And for a further, separate and partial defence, the claimant alleges that in and by the said contract of transportation between the libellants and itself it was provided that the shipowner should not, under any circumstances, be liable for any loss or injury to passengers' baggage beyond the sum of 250 francs, at

which such baggage is valued, unless a bill of lading 25
or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent, and the claimant avers that no bill of lading or receipt was given or freight paid on any value in excess of the sum of 250 francs by the libellants or by either of them.

ROBINSON, BIDDLE & WARD,
Proctors for Claimant.

STATE OF NEW YORK, }
City and County of New York, } ss.: 26

JAMES A. WRIGHT being duly sworn, says, that he is the 2nd Vice-President and an officer of the International Navigation Company, the corporation defendant in the above entitled action. That the foregoing answer is true to the knowledge of this deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That the reason why this verification is not made by the defendant is because the defendant is 27
a corporation, and the grounds of deponent's belief as to all matters in said answer, not stated upon his knowledge, are investigations which deponent has caused to be made concerning the subject matter of this action and information acquired by deponent in course of his duties as an officer of the corporation defendant in this action.

JAMES A. WRIGHT.

Sworn to before me this 24th }
day of February, 1898. } 28

A. LEO EVERETT,
[Seal] Notary Public,
N. Y.

[Endorsed:]—Answer.—Filed February 24, 1898.

29

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

L. S. BLEECKER *et al.*

vs.

The Steamship "KENSINGTON" *et al.*

Before Hon. Addison Brown, Judge.

30

NEW YORK, June 8, 1898.

Appearances:

ROGER FOSTER, Esq., for Libellants.

ROBINSON, BIDDLE & WARD, Esquires (Mr. Ward) for the Claimants.

MR. FOSTER: If your Honor please, I move to suppress a deposition that has come here from Antwerp, the deposition of Maurice de Cock. He was asked in
31 first cross-interrogatory: "Do you know of any provision or provisions in the statutes or Code of Belgium or any decision or decisions, or any opinion or opinions of a court of justice of Belgium which decides or decide, discusses or discuss, determines or determine, regulates or regulate, affects or affect the validity of, or recognize or recognizes the validity of such a contract as is referred to in the 6th Interrogatory, or such a contract as is referred to in the 8th Interrogatory, or such a contract as is referred to in the 9th Interrogatory at-
32 tached to the commission herein." His answer to that Interrogatory was: "I know of several decisions of our Courts which recognize the validity of such a contract as is referred to in the 6th Interrogatory."

In answer to the 2d cross-interrogatory he says: "I quote the decision of the Court of 'Cassation' rendered on the 12th day of November, 1895, of the 'Pasicrisie Belge' first section, edition of 1885, page 275; decision of the 14th day of February, 1895, found in the 'Pasicrisie Belge,' first section, edition of 1895, page 93;

decision of the Court of Appeals of Brussels, rendered 33
the 27th day of July, 1896, found in the volume entitled 'Jurisprudence du port d'Anvers,' published in 1897, page 35." The second cross-interrogatory asked him "to quote at length such statute or statutes," and so forth, and your Honor will perceive he merely cites them and does not quote them at all. I have made diligent search and am unable to find the authorities referred to and doubt their being in the United States.

Mr. Ward: Your Honor sees from the man's answer that he understood by "quote" the word "cite." 34
If my friend intends to stand on this I will ask permission to send this commission back and ask to have the citation quoted. This commission was executed before a United States consul.

Mr. Foster: I object to the postponement of the trial for this purpose.

The Court: I deny the motion to suppress the deposition, but I give leave to the libellants to call for a further answer to that question from the witness.

Mr. Ward: It is stipulated between counsel that 35
proctor for claimants shall send to the witness De Cock to return to him copies of the decisions, or so much thereof as applies to the questions referred to in the interrogatories, and his affidavit that the copies are correct, which proctor for libellant agrees to accept.

Mr. Foster: Provided that the same is filed in this Court on or before the first day of July, 1898, and that the consul certifies that the copies are correct.

Mr. Ward: I don't agree to that.

The Court: I cannot require any such thing. Or- 36
dinarily on a commission the consul would not be required to verify or certify anything beyond the oath of the witness.

Mr. Foster: I take an exception.

The Court: In denying the motion to suppress the deposition opportunity is given to the libellant to send the commission back for a further answer to the question by giving the language of the decision cited.

Mr. Foster: On account of the expense and delay

which would be necessitated the libellants will be unable to comply with the suggestion of the Court.

MR. WARD: I offer to send the commission back to Antwerp at the claimant's expense in the first instance to have the further answer made by the witness, the cost of the returning commission to be a cost in the case.

MR. FOSTER: I accept that, provided the trial can go on, reserving the right to have that deposition put in evidence subject to legal objections on or before July 1st next.

MR. WARD: I object to that. I don't think the case should be tried in such a way.

MR. FOSTER: I will accept that offer provided the case can go on, reserving the right to have that deposition put in evidence, subject to legal objection, on or before July 1st next, but since the libellants have come here from Massachussetts to try this case to day, and since a third witness has come here from Washington for the same purpose, I cannot consent to a postponement of the trial.

THE COURT: I understand the statement of libellants' counsel to be that he prefers to go on with the case now rather than to have the case reserved until the commission can be completed and the further answer can be obtained by claimants' counsel, as offered by him.

Mr. Foster here states the claims of the libel.

Mr. Ward states the claims of the answer.

LIZZIE S. BLEECKER, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Foster:

Q. Where do you live? A. My husband is in the navy. I live everywhere. Newport I hail from.

Q. But you have been spending the winter in New Jersey? A. In New Jersey and Massachusetts.

Q. When this libel was brought you lived in New

Jersey? A. In New Jersey, Morristown, New Jersey. 41

Q. You have lived there during the winter? A. From December 23d until April.

Q. Where were you during the year 1897 before December? A. We were in Paris, Antwerp, Genoa, Naples, Nice, London.

Q. Generally in Europe, principally in the south of France? A. The first part of the year we were in the south of France; after that we went to England, then came back to Antwerp. 42

Q. You went to Europe to join your husband? A. To join my husband.

Q. You are one of the libellants, and Miss Elsie L. Bleecker is the other libellant and your daughter? A. Yes, sir.

Q. When did you leave——

By the Court:

Q. She was with you in your travels? A. She was with me all the time. 43

By Mr. Foster:

Q. When did you and your daughter leave Paris for Antwerp on your return voyage? A. The 9th.

Q. Wasn't it the 8th? My memorandum says the 8th. A. Wednesday—was that the 8th or 9th!

Q. The 8th or 9th of December, 1897? A. Yes.

Q. Where did you buy your ticket for New York? A. In Paris. 44

Q. From the International Steamship Company?

By the Court:

Q. Did you have one or two tickets? A. We had one ticket with two names on it, I think.

Mr. Ward: I will ask that the libellants produce the ticket.

Q. You bought that for yourself and daughter in

Paris—and when? A. It was before the time of our starting.

Q. It might have been a year before? A. No. It was the 8th I should say.

Q. Within a day or two of the time you left? A. Within a day or two of the time of our leaving.

MR. WARD: I offer to counsel the paper referred to by witness.

THE COURT: The paper is shown to the witness and she is asked if that is the ticket.

MR. FOSTER: No, if your Honor please, I dont ask that.

THE COURT: You must show that to the witness and ask her if it is the one she bought or I shall strike out what she has said. It must come in evidence, you will have to put it in evidence. You are the libellant and you have got to show your case. If there is a ticket bought you must produce it if it is here.

By Mr. Foster:

Q. You paid your passage money to whom? A. To the agent in Paris.

Q. And how much was it?

MR. WARD: I object to that.

THE COURT: I exclude it. The paper is offered to you for your use, Mr. Foster.

MR. FOSTER: I except to your Honor's ruling.

THE COURT: I shall not take oral testimony in regard to the contents of that paper which is offered to you by the other side, but I allow you to prove what she paid.

Q. (Read to the witness.) And how much was it? A. I don't remember.

Q. It was passage money for what?

MR. WARD: I object to that.

Question withdrawn.

Q. What took place between you and the agent? 49

MR. WARD: The lady bought her ticket and she says so, but what took place between her and the agent I object to.

Question allowed.

MR. WARD: We except.

Q. When you paid your passage money what took place between you and the man to whom you paid it? 50

MR. WARD: I object.

THE COURT: I have ruled that you cannot proceed, Mr. Foster, and I shall dismiss the case unless you put the ticket in evidence. The ticket is the contract and you can't recover on the contract without producing it.

MR. FOSTER: I except to your Honor's ruling. I claim that this ticket is not a contract. I do not wish to concede that the ticket is a contract. It has been held to be a token only. 51

THE COURT: The witness has already said she bought one ticket for the two.

Q. Do you remember what day it was? A. Wednesday, I think.

Q. During the first few days of December? A. It was during the first few days in December.

Q. And you sailed from Antwerp on December 9th, did you not? A. Yes, we sailed from Antwerp on December 9th. 52

Q. Wasn't it the 11th? A. We started from Paris on December 9.

Q. And what was the name of the steamer on which you sailed? A. The *Kensington*.

Q. On that steamer you took with you certain baggage, did you not? A. Yes.

By the Court:

Q. I understand you took the steamer *Kensington* on December 11 at Antwerp? A. Yes, sir.

53 Lizzie S. Bleecker.

By Mr. Foster:

Q. Whose property was that baggage? A. Part mine and part my daughter's.

Q. Your daughter Miss Elsie Bleecker? A. Elsie Bleecker, yes, sir.

Q. Was that baggage put on board the steamer? A. We saw it on the wharf.

Q. And it was there in charge of the agents?

54 Mr. Ward: I object.

Q. Was it on the wharf from which the steamer sailed? A. On the wharf from which the steamer sailed.

Q. In how many trunks was it? A. Two.

Q. Were those trunks placed in the steamship hold? A. Presumably, yes.

By the Court:

Q. Did you ever see the trunks afterwards?

55 A. No.

Q. Never saw them? A. No.

By Mr. Foster:

Q. In whose charge were they on the wharf? A. In charge of the Steamship Company. I had the receipt for the baggage from the office in Antwerp.

Q. What did you do with that receipt? A. I gave it to Mr. Cole I think and Mr. Cole gave it to you I think.

56 Q. What did you do with the ticket which you referred to in answer to a question of the Court? A. I folded it up and put it in my bill of exchange pocket-book and the next day going on the steamer I was asked for it and gave it up.

By the Court:

Q. The next day after you went on the steamer?

A. The day I arrived on the steamer, the morning after I had bought it.

Q. The same day you went on board the steamer? A. Yes.

Q. You gave the ticket up? A. To the paymaster on the *Kensington*.

By Mr. Foster:

Q. To whom did you give it? A. To the paymaster.

Q. One of the officers of the *Kensington?* A. Yes, sir.

Q. Did you read that ticket before you gave it up? 58

MR. WARD: I object.

Objection overruled.

A. No, I didn't look at it except that my name was on it.

Q. Have you ever seen it since? A. I have not, unless that is it.

Q. You don't know what that paper is, do you? A. No, sir.

Q. Please don't assume a paper you see lying on the 59 desk is it. What were the contents of those trunks, what was their value?

MR. WARD: Shall we go into the question of damages before your Honor?

THE COURT: No, I shall not go into all these items of the contents of the trunks. I never try the question of damages here.

MR. FOSTER: I except.

THE COURT: I don't exclude general evidence but I can't go into the details to prove the 60 items of the damage.

Q. State generally the contents of those trunks? A. Wearing apparel.

Q. Wearing apparel for yourself and daughter? A. Yes.

Q. Purchased where? A. Partly at home and partly abroad.

Q. About what was its value?

MR. WARD: I object.

61 Lizzie S. Bleecker.

Q. What was its value?

Mr. Ward: I object to that. It is a question to come up before the commissioner.

By the Court:

Q. It was bought partly at home and partly abroad? A. Yes, sir.

Q. How long had you been abroad? A. About a year
62 —not quite.

Q. Was any of this new? A. Yes.

Q. Absolutely new, not worn? A. It had not been worn.

Q. Was it all wearing apparel? A. No.

Q. What were the articles that were not wearing apparel? A. They were photographs and books. I think that is all except wearing apparel.

Q. What were some of the principal items of value? A. Chinchilla cape and black silk dresses.

63 Q. At how much do you value the chinchilla cape? A. It was valued at $300 in New York.

Q. Was that new, or had it been worn? A. It had been worn.

Q. Was it purchased during your travels? A. No; the skins were purchased in South America by my husband and made up in Boston, and I asked the value in Boston and New York, and found it to be $300.

Mr. Ward: I move to strike that out.
64 Motion denied.

Q. Mention any other article of value? A. We had silk dresses given to me by my husband and made up in Paris, of which I put down the value as about $75; but the value in New York at the present time would be $150 or $200. I mean they could not be replaced for less than that.

Q. Do you mean each would be worth $75? A. Yes, sir; each of them. That is what I paid for them.

Q. In Paris? A. Yes, sir.

Q. How many did you mention? A. Two. 65

Q. Worth $75 each? A. Yes, sir. They cost—I can't tell you how much they cost me because they were given to me, the silk was given to me by my husband, who bought it abroad, and I had it made up. I put the value at $75, being from Paris, but here they could not be replaced for double that amount.

Q. Each was worth $150 here? A. Yes, sir.

Q. Were these articles yours, or your daughter's partly? A. Two of the black silk dresses were mine, the third I spoke of belonged to my daughter. The chinchilla cape was my daughter's. 66

THE COURT: I ask these questions merely to have it appear that there were articles of real value. I can not go into the details.

RECESS.

67

By Mr. Foster:

Q. Are there any other articles you can specify?

By the Court:

Q. Of your own, that you claim to be worth more than 250 francs. A. The silk dresses.

Q. You call that $50, don't you? A. Yes, sir.

Q. The silk dresses belonging to you were worth over 250 francs, were they? A. Yes, sir.

Q. You said you took a receipt at the office of the Company for your baggage? A. Yes, sir. 68

THE COURT: If you rest without putting that receipt in evidence, Mr. Foster, I shall dismiss the case. The laboring oar is on you, if you don't show what is done I shall dismiss the case. When you say the libellants received writings you must produce them.

MR. FOSTER: I am willing to produce what my friend calls for but I submit I am not bound

69 *Lizzie S. Bleecker.*

to put in evidence anything that is not necessary.

By Mr. Foster:

Q. Is this paper which I show you the receipt to which you refer?

By the Court:

Q. Which you took for the baggage? A. Yes.

70 Mr. Foster: I ask to have that marked for identification.

The paper is marked Libellants' 1, for identification.

Q. That was before you went on board was it? A. Yes, sir.

By Mr. Foster:

Q. You received that in Antwerp? A. Yes.

71 By the Court:

Q. Was that all the paper that you received, when you delivered your baggage? A. Yes, sir. I had it sent on by petite vitesse from Paris, which is slow freight.

Q. I understand this to be merely for transportation on land except it says, "to be forwarded in bond to Antwerp and there to be put on board the steamship *Kensington* sailing on the 11th of December."

72 Cross Examined by Counsel for Claimants:

By Mr Ward:

Q. You got your ticket in Paris? A. I paid for part of the ticket in Paris, I think I received the paper in Antwerp.

Q. You told us on your examination in chief you got your ticket from the agent in Paris? A. So I did; I paid down a certain amount.

Q. Didn't you get the ticket? A I suppose I got

a receipt for it and gave it up at the office, because that is what I got at the office in Antwerp.

Q. This is what you got in Antwerp at the office (referring to the paper produced by claimant's counsel)? A. I presume it is.

Q. You did get a ticket in Antwerp and you presume this ticket which I now show you is that? A. It is the color, I presume it is.

MR. FOSTER: I move to strike that out. 74

By the Court:

Q. You got a ticket for transportation? A. For myself and daughter.

Q. Mr. Ward is asking about something different. A. He asked if I got a ticket. I got a ticket.

Q. A passenger's ticket? A. A passenger's ticket.

Q. You don't refer to your receipt for baggage? A. Not at all.

MR. FOSTER: I move to strike out, "I presume it is" the ticket. 75

THE WITNESS: I don't know how I can prove it.

Q. What did you do with the ticket that you spoke of before, that you got in Paris? A. I gave my money down in Paris for a ticket.

Q. The whole of it? A. Not the whole of it.

Q. How much did you pay in Paris? A. I don't remember.

Q. Half of it or a quarter,—do you know? A. What is customary. I don't know. 76

Q. You paid part only in Paris?

MR. FOSTER: I move to strike out the statement, "I presume it is" the ticket, on the ground that it is not evidence.

Q. You paid part only at Paris for the ticket that you got there, as I understand? A. I paid a part.

Q. And now you gave up that ticket that you got in

Paris to whom, and when and where? A. In the office in Antwerp—if I gave up anything, I am not sure I gave up anything or if it was merely a receipt or a letter. I had a letter to the Company.

Q. To the company in Antwerp? A. No, to the company in Paris, to the agent in Paris.

Q. I thought you got the ticket in Paris? A. I told you I paid part of the ticket.

78 Q. You spoke of getting a ticket in Paris? A. I thought I did.

Q. You are not sure? A. I know now that I did not get the whole ticket in Paris. I paid part of it.

Q. You paid something in Paris. When you paid that what did they give you for it, for the money you did pay in Paris? Did they give you some kind of a paper? A. I suppose they gave me a receipt, yes, they always do.

By Mr. Ward:

79 Q. You see, Mrs. Bleecker, here is a paper you got in Paris the 2d of December, 1897, some days before you left. You paid 150 francs there and paid the balance at Antwerp. I show you this ticket.

THE COURT: Mark it for identification.

The paper is marked Claimant's A for identification.

By the Court:

Q. Whatever paper you got at Paris, I understood
80 you to say before, you delivered up at the office in Antwerp. Is that correct, or not? A. I am trying to remember. I know that I got something there and I suppose I must have got a receipt of some kind, but this was handed to me——

Q. Having got that in Paris and gone to Antwerp, I understood you to say a few moments ago that whatever the paper was you did get you delivered that up at the Antwerp office and received something else. A. I got my baggage in Paris and paid for it and got a receipt and when I went to Antwerp I got a receipted

baggage check. But I don't think I got any paper in Paris—I am not sure of that—for my personal self, for myself, any ticket.

Q. Did you pay any money? A. I paid down money.

Q. Don't you think you got any receipt for that money? A. I don't think I did. I can ask and find out and I can see from my books, but I don't think I did. 82

Q. Did you get any passenger ticket for the steamer anywhere? A. Yes, I got a passenger ticket in Antwerp after I paid the rest of my money.

Q. Do you mean the part which remained unpaid? A. I had to pay money to reserve a stateroom and get my passage, in Paris. I had some papers, whether they were receipts or not I don't know. At any rate I gave up everything in Antwerp and got this ticket.

Q. This ticket (Claimant's A for identification)? A. Yes, sir. 83

Q. This is the one, is it? A. I don't know, because I merely looked at the ticket. I don't know; I couldn't identify the ticket again if I saw it.

MR. FOSTER: I move to strike out the statement "I presume it is" the ticket as incompetent.

Motion denied.

MR. FOSTER: We except.

Q. Do you recollect whether you got two tickets or one at Antwerp—one paper I mean? A. I got one paper for passage and one paper receipted for baggage. 84

Q. Now, won't you look at that paper (Claimant's A for identification), and say whether you recall it or not. A. I dind't read it when I got it.

By Mr. Ward:

Q. Won't you look at it. A. I see it. My name is on it. I can't identify what I don't know.

Q. You don't look at it. A. I see my name here

and it is the same colored paper, that is all I can testify.

By the Court:

Q. The ticket you received was for yourself and your daughter I suppose. Is that right? A. As I paid two passages, yes.

MR. WARD: I offer the ticket in evidence.

MR. FOSTER: I concede it is the ticket but I object to its admission in evidence as irrelevant and immaterial, and upon the ground that the conditions therein contained are against public policy.

The paper is marked Claimant's Exhibit A.

MR. FOSTER: I except your Honor to the admission of the paper.

MR. WARD: I offer in evidence the baggage receipt.

MR. FOSTER: I object to the admission of the baggage receipt as irrelevant, immaterial and incompetent.

Objection overruled.

MR. FOSTER: I except.

The baggage receipt is marked Claimant's Exhibit B.

Q. Did you receive the ticket on the same day that the vessel sailed, or the day before? A. I think it was the day before.

Q. Do you recollect about what time of day it was? A. It was in the morning before twelve.

Q. Did the vessel sail from Antwerp or from a point down the river? A. From Antwerp.

Q. You got on board at the wharf at Antwerp, did you? A. Yes, sir.

Q. At what time in the day did the vessel sail? A. I don't remember exactly what time it was.

Q. Do you recollect whether it was in the forenoon?

A. It was in the morning I should say; I should say it was before noon, but I am not quite sure whether it was just before or just after. 89

Q. Was it at the same office that you received the receipt for your baggage that you got the ticket for the passage? A. Yes.

Q. And at the same time? A. And at the same time, we made the one visit. I think we got the ticket on one side of the office and the receipt on the other. 90

By Mr. Ward:

Q. Had you been to Europe before? A. Yes.

Q. How often?

MR. FOSTER: I object to that as irrelevant.

Objection overruled.

MR. FOSTER: I except.

A. I have been three times I think.

Q. What sort of passage in respect to weather was this from Antwerp to New York? A. We had a rough passage. 91

Q. Was it a very bad one? A. Fairly bad; yes.

Q. Had you ever seen anything as bad before? A. I have seen times it was as bad, but not the whole trip.

Q. Were you able during the whole of that voyage to go on deck? A. No. But, then many times before I had never been able to either.

Q. On this voyage, for how large a part of it do you recollect you were unable to go on deck? A. I can't tell. 92

Q. A large part? A. I should say half the time we would have been able to.

Q. Were you able to sleep in your berth the whole voyage? A. Yes.

Q. You stayed in that? A. Yes.

Q. Are you a good sailor, Mrs. Bleecker? A. Yes.

Q. You are not troubled by seasickness? A. No; I am a good sailor and not seasick.

By the Court:

Q. What is the reason you couldn't be on deck, then? A. Because of the storm and wind and rain. I was on deck on one of the rough times, but it is not agreeable for a lady to be on deck in a stormy passage.

By Mr. Ward:

Q. Were you able to go to the table to meals all
94 through the voyage? A. Yes; I went, I think, nearly every day, every meal.

Q. But some days you did not. You say "nearly" every meal? A. But some days I did not.

Q. Was that on account of the roughness of the weather? A. Yes.

Q. Wasn't there a tremendous amount of rolling? A. There was, really.

Q. Excessive rolling? A. There was much rolling.

Q. Wasn't it a subject of terror to passengers, the
95 rolling of the ship? A. No, I think not. Nothing was carried away on deck.

Q. But were not the passengers terrified? A. Naturally some of the women were.

Q. You were not? A. I was not. I am a good sailor.

By the Court:

Q. Did you say anything about the value of your merchandise when you took your baggage receipt?
96 A. No, there was nothing said about it.

Re-Direct by Counsel for Libellants:

By Mr. Foster:

Q. Was it on account of the wet coming from the rain that you were kept from the deck, or on account of the wind? A. It was partly the rain and partly the wind.

Q. It was wet weather? A. It was wet weather, yes, sir.

Q. And on these days when you didn't take meals

was it on your own account or daughter's account? A. Partly on my daughter's account.

Q. She was seasick, wasn't she? A. I was not seasick but my daughter was.

Q. Isn't it a fact that one or two passengers in your cabin took every meal and went to every meal? A. Yes, I think it was.

Q. Did you have friends who crossed the Atlantic on other boats the same time as this? A. I can't 98
name them.

Elsie Lynch Bleecker, being duly sworn and examined as a witness for the libellants, testifies:

By Mr. Foster:

Q. You are one of the libellants? A. Yes, sir.

Q. And you are daughter of the previous witness? A. I am.

By the Court:

Q. You were passenger with her on the *Kensington*? 99
A. Yes.

Q. Were you present when she went to the Paris office? A. I was.

By Mr. Foster:

Q. Where was that ticket delivered to you, according to your recollection, at Paris or Antwerp? I mean the Claimant's Exhibit A? A. I don't know; I think it was Paris, I can't remember; I know that we had some receipt at Paris, but I don't know whether it was the ticket or receipt for the part we paid. 100

Q. You don't recollect whether you had this or some other receipt which you gave up at Antwerp? A. No.

Q. Did you read that ticket? A. No, I didn't touch it.

Q. Did you read any of the receipts? A. No.

By the Court:

Q. Were you present when your mother got Exhibit A in Antwerp? A. Yes, I was.

101 Elsie Lynch Bleecker.

Q. Do you remember this? A. I don't remember whether we got a ticket in Antwerp or Paris. I suppose that is the ticket, that is the color; I don't know, because I didn't handle the ticket at all.

By Mr. Foster:

Q. You never read that ticket? A. I never read that ticket, no.

Q. Nor the receipt? A. No. I never handle tickets
102 at all, never.

By the Court:

Q. Do you remember seeing a blue paper like that? A. I remember seeing a blue paper like that ticket, but I don't remember where we got it.

Q. Did you see your name in it? A. No, I didn't. I didn't look at it at all.

Q. You don't know whether you got this paper in Paris or Antwerp, or whether your mother did? A.
103 I don't know, no.

By Mr. Foster:

Q. You had some trunks which were intended for your stateroom and not for the hold? A. We had two small steamer trunks, they were taken to the pier marked "stateroom" in large letters, and when we got into our stateroom there were no such trunks there; so I went on the wharf and tried to look them up, and a man told me they were probably over in a pile where
104 they were to go in the hold. I went over and saw four of our trunks, the two for the stateroom and two for the hold.

Q. When you saw them what did you do? A. I got a man and told him to take them down into our stateroom, otherwise they would have gone into the hold because they were with the hold luggage. We got them to the stateroom, they arrived safely because I paid the man to take them in, myself.

Q. They were not damaged in the stateroom? A. They were not damaged in the stateroom, no.

Q. You looked after them yourself? A. Yes, sir.

Q. When did you arrive in New York? A. The 23d of December, 1897.

Q. About what time of day? A. I think about half-past eight or eight in the morning, somewheres around eight o'clock.

Q. Did Mr. Cole meet you there? A. He did.

Q. Did he accompany you to look after your trunks? A. He did. I went on the ship and looked down into 106
the hold and saw the worst mess I ever saw in my life.

Q. Describe it? A. Straw, and pieces of broken china and a few old clothes all discolored with aniline dyes; one of my shoes, and I can't think—the whole thing was in a state of mess.

Q. Any water there? A. Some water there, yes, sir.

Q. Any paint? A. There were colors, aniline colors, so one of the men in the freight place told me. 107

By the Court:

Q. Did you go down in the hold? A. No.

Q. Looked down through the hatches? A. Yes, and saw this mess.

By Mr. Foster:

Q. Which deck was that? A. I looked from? I don't know what you call it.

Q. Was it the main deck?

108

By the Court:

Q. Did you see any trunks at all? A. I saw the remainder of one of our trunks, the cover.

Q. How did you identify it? A. It had our name on.

Q. Were there other trunks there? A. That is all I saw. It was a canvas cover with Bleecker marked on it.

Q. You saw no other trunk? A. I saw no other trunk. I saw parts of a trunk being taken out, outside

on the pier, but I didn't see any more down in the hold at all—some one else's trunk.

Q. Didn't you see any trunks removed from the hold? A. Parts of them, that is all, no whole trunk at all.

Q. When you looked down were the contents of the hold mostly removed or were they still there? A. They were still there.

By Mr. Foster:

Q. They had removed very little, or none at all? A. Very little.

By the Court:

Q. Why didn't you see something else besides one cover to your trunk? A. Because that is all there was to see then.

Q. And the rest covered—? A. With water and straw. Everything was in a mess, you couldn't tell one thing from another.

By Mr. Foster:

Q. Things floating around? A. Evidently they were water-soaked.

Q. Were your trunks ever delivered? A. Never.

Q. Did you ask for them? A. We asked for them.

Mr. Ward: We admit they were never delivered.

The Witness: They were demanded that morning.

Q. Did you give the particulars of your claim to any of the steamship company? A. No, I did not.

Q. Didn't you tell them what was there, didn't you make complaint with Mr. Cole? A. With Mr. Cole, yes, but he did the talking for me.

Q. You authorized him to represent you? A. I did.

Cross-Examined by Counsel for Claimants.

By Mr. Ward:

Q. I understand that when you looked down this hatch everything was in a state of dire confusion? A. Yes, sir.

Q. Total wreck? A. Yes; sir.

Q. You don't mean it was filled with water and things floating around? A. I mean things were water- 114
soaked.

Q. Did you see water there? A. I saw a mix, that was all.

By the Court:

Q. Did you see any of your own articles of dress to recognize them? A. Not then; afterwards, in a pile.

Q. You didn't accept them? A. I did not.

By Mr. Ward:

Q. You saw there had been water there? A. Yes. 115

Q. What sort of a voyage was it? A. It was rough.

Q. Isn't that a little mild? A. I asked one of the officers on board——

Q. Never mind. I asked what you saw. Was it very rough? A. Very rough, yes, at times. It wasn't all the time.

Q. Were there not long periods when it was unsafe to go on deck, and people didn't? A. Not long peri- 116
ods.

Q. How long? A. I don't know. I was seasick all the time.

Q. You were in your stateroom practically all the voyage? A. No, not all the voyage. I generally go up if I can.

Q. Were you ever on deck? A. Oh, yes, sir.

Q. There was a prodigious amount of rolling? A. great deal, but I have seen just as bad going over, perhaps not as long but just as heavy.

117 Charles D. M. Cole.

Q. How do you measure rolling? A. I don't know how.

Q. It is just an impression in your mind? A. Simply rolling.

Q. You wouldn't undertake to say how far over it rolled on one side. A. No.

Re-Direct by Counsel for Libellants:

118 By Mr. Foster:

Q. You spoke of asking one of the officers something. What did you ask him?

Mr. Ward: I object.

Objection sustained.

Mr. Foster: We except.

Q. You spoke about seeing your clothes in piles,—where and when was that? A. The 27th or 28th of December I think; down in the house where they take
119 out the luggage.

Q. Who was with you when you saw it? A. Mr. Cole.

Q. And Mrs. Bleecker? A. And Mrs. Bleecker.

Q. In what condition? A. Absolutely useless.

Q. On what account? A. Stained with the dyes and water-soaked and dirty and torn.

120 Charles D. M. Cole, being duly sworn and examined as a witness for the libellants, testifies:

Mr. Foster: I understand it to be conceded that the libellants claimed for their property within forty-eight hours after their arrival and that no request for a written statement was then made by the Steamship Company's agent.

Mr. Ward: I shall make no objection to libellants' claim on the ground that the demand was not timely or sufficiently explicit.

By Mr. Foster:

Q. What is your occupation? A. Lawyer, attorney and counsellor at-law.

Q. Connected with what corporation? A. American Telephone and Telegraph Company.

Q. You are one of their counsel and live where? A. At Morristown, New Jersey.

Q. Did you meet Mrs. and Miss Bleecker on the arrival of the *Kensington* in December, 1887? A. I 122
did.

Q. Did you then with Miss Bleecker search for their luggage? A. I did.

Q. Please state what you saw and where you saw it? A. I was present when the top of the hold was taken off and pieces of luggage were taken out soaking wet and almost so that we couldn't identify them. I then felt that it ought to be looked into and I went down into the hold where the luggage was supposed to be and searched it. After a long search I found a can- 123
vas cover of one of Mrs. Bleecker's trunks which had her name on it and the top of the other trunk—with which I was familiar—having seen it in my own house. The condition of the hold was about 6 inches of straw, personal effects and merchandise thoroughly soaked; I should say there was a layer of about 6 inches of straw all over the hold.

By the Court:

Q. Are you speaking of some subsequent time? A. I went right down into the hold and looked in the 124
hold.

Q. Where was this 6 inches? A. On top of the floor of the hold.

Q. The floor is the bottom? A. It is on the floor of the hold the debris was.

By Mr. Foster:

Q. Was there anything above it? A. There was roofing over the top.

Q. Was the hold empty? A. The hold was empty

except for the broken luggage and personal effects and merchandise.

Q. It was practically empty then? A. Practically. It was evident the baggage hadn't been properly stowed.

MR. WARD: I object to that as a conclusion and move to strike it out.

Motion granted.

MR. FOSTER: We except.

Q. What hold was this? A. The first hold amidships I should say.

Q. And there was nothing down there only about a layer of six inches on the bottom? A. That is it.

Q. Consisting of straw? A. And merchandise, crockery and personal effects, shoes and dresses and personal effects scattered all over the floor and thoroughly soaked with water and green paint.

Q. How many trunks and parts of trunks did you distinguish down there? A. I should say about three; the two belonging to Mrs. Bleecker and half of the top of another.

Q. What was there besides that in the hold? A. I saw half of a packing case way up forward, which had evidently contained crockery or glassware or china.

By Mr. Foster:

Q. Was that fastened? A. Not fastened at all; it was partly broken open.

Q. Left so it could roll around loose? A. Yes, sir.

Q. Did you notice any dye or paint there? A. I did. I also noticed one or two large, it looked like pewter bowls.

Q. Full of what? A. They were empty; I couldn't tell what had been in them, they looked as if paint had been in them.

Q. Did they look as if they had been used for packing paint? A. I couldn't say.

Q. Did you see the place where the paint or dye had been packed? A. I saw evidence of it in the hold.

Q. But the bottles or demijohns or whatever held the paint you didn't discover? A. No.

Q. Any water there? A. Everything was very wet, soaked through, alongside.

Q. Did you see any signs of their having fastened these articles of merchandise so they could be kept clear from the passengers luggage during the voyage? 130

MR. WARD: I object to what he saw after a complete wreck.

THE COURT: He can tell what he did see.

A. I did not.

By the Court:

Q. Did you look to see? A. I did.

Q. What did you look for? A. I saw it right away, I looked for the baggage and the evidence whether it 131 had been properly stowed or not.

Q. What did you look to find, if anything? A. To see if the trunks had been put in one place and boxed up, and if the merchandise had been separated in other places.

Q. You have only spoken of a box which you said apparently had crockery in it, and some paint, that is all I have heard you speak of besides the trunks? A. This debris that was on the floor was merchandise mostly or broken crockery. 132

Q. What other merchandise besides crockery? A. That is all, except these pewter bowls, which battered to pieces; they looked like bowls, I don't know what they were; there were about five of them, I should think.

By Mr. Foster:

Q. Were many of the articles so crushed it was difficult to distinguished what they were? A. Yes.

133 Charles D. M. Cole.

By the Court:

Q. From what you say, there must have been extremely little in the hold? A. That is my belief.

Q. The hold from the deck above was 10 feet or 12, wasn't it? A. It was all of 8 feet it was the whole width of the ship—and about 30 feet long; it was the hold where the passenger's luggage is all usually put in a steamship.

134 Q. Did you make a careful inspection? A. I did. Before going down there, I thought there would probably be a claim for damage, and I looked at it carefully.

By the Court:

Q. Do you know what dunnage is? A. I do not, not by that name.

By Mr. Foster:

Q. Did you see any articles there which could—

135 any stuff or material there which could have been used to protect the merchandise or keep the articles apart so they should not crush each other? A. Nothing at all of the kind.

By the Court:

Q. How large was this compartment these things were in? A. It was the width of the ship, and I should say 30 feet lengthways. The appearance of the hold to me was of a room about this size in

136 which had been put a few pieces—a few trunks and several crates of crockery, and some boxes of paint.

Q. Several crates of crockery? A. Yes; enough to cover this floor, with this straw; it looked as though it had been about only a third full.

Q. Did you see crates there? A. Only this one. I saw one up forward that was half broken.

Q. Is that besides the box you have said was broken—you spoke of a box before? A. I mean a box or crate.

Q. I understand a box is a different thing from a

crockery crate? A. This was a board box, what I should call a box.

Q. Did you see any crate? A. I don't know exactly what you mean by that.

By Mr. Foster:

Q. Did you see any openings in the box when it was originally packed? A. No openings in it.

Q. Did you see signs of there having been other boxes? A. Yes, sir; the floor was covered with 138
splinters, pieces of crockery and bowls and pitchers; there were plenty of splinters and pieces of board.

Cross-Examined by Counsel for claimants:

By Mr. Ward:

Q. The straw which you saw came out of the crates or boxes which held crockery? A. I should suppose so.

Q. And the general appearance of things to you was there was crockery all mixed up there and baggage 139
and personal apparel. You haven't the slightest idea how many trunks were there, have you? A. Yes, I should say there were not over seven or eight trunks there.

Q. Why do you say seven or eight? A. Because I saw three taken out, and I looked around and saw evidences——

Q. But you are not accurate about that? A. No, it is only an opinion. I saw pieces of trunks taken out, parts of three; they were not whole, they were 140
all falling to pieces as they were taken out.

Q. You don't profess to be an expert about the stowage of ships? A. I do not.

Libellants Rest.

Claimant's Case.

WILLIAM J. ROBERTS, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. Ward:

Q. You were master of the *Kensington* on this voyage? A. Yes, sir.

Q. Who stowed the baggage at Antwerp? A. The Company's stevedores.

142 Q. That is done by shoremen? A. That is done by shoremen.

Q. Does any officer on the thip have charge of it? A. Yes.

Q. Which officer? A. Third officer.

Q. Who was he on this occasion? A. A man named Keryl.

Q. Where is he? A. In Antwerp, sick.

Q. How long has he been there? A. He has been in Antwerp ever since December.

143 Q. Ever since this voyage? A. Ever since this voyage.

Q. In Antwerp when the vessel arrives what do you do? A. I go ashore.

Q. When do you come back? A. About two hours before sailing.

Q. How long have you followed the water? A. Twenty-three years.

Q. Were you first in sail? A. Yes, sir.

Q. How long? A. Seven years.

144 Q. Then you went in steam? A. Yes.

Q. As what? A. I went as junior officer.

Q. How long have you been in steam? A. I have been in steam about fifteen years.

By the Court:

Q. How long master? A. About nearly two years.

Q. How long had you commanded the *Kensington*? A. About eight or nine months; about eight voyages I think.

Q. At this time of this voyage, how long before that voyage? A. About six voyages before that, that would be about seven months.

Q. What sort of voyage did you have? A. Very rough voyage. Started in with strong westerly gale leaving the North Sea, moderating a little, later on increasing, blowing very strong from the westward, ship plunging very heavily, shipping great deal of water. And getting towards the neighborhood of Sable Island 146
on December 20, on Monday I think it was, we had a very heavy gale with squalls, hurricane force; ship was laboring very heavily, which necessitated me to lay her to for 14 or 15 hours; put her head to the sea.

Q. How did you head—off your course? A. Oh yes, sir; the sea was abeam while the ship was on her course.

Q. So you had to throw her head up? A. I had to bring her up within two points of the wind.

Q. How much off your course was that? A. About 147
four to five points.

Q. You lay in that way for 13 or 14 hours? A. For 13 or 14 hours.

Q. How much headway were you making at that time per hour? A. About two knots.

Q. How was the ship behaving? A. She was behaving—she was rolling very heavy.

Q. How far would she roll? A. From thirty-eight to forty-five degrees.

Q. Is there any way of ascertaining how much she 148
rolls? A. Yes.

Q. How is that done? A. By clinometer.

Q. That indicates the angle to which she rolls? A. Yes. That is thirty-eight or forty-five degrees either side.

Q. Did you ever see a vessel roll as much as that in your life? A. I don't think I ever have, I am sure I never have.

Q. Did you ever while you have been in steam on the

149 Atlantic have such weather? A. No, I was never necessitated to heave-to before.

Q. Never was on a ship that hove-to for 13 or 14 hours? A. No, never in that class of ship. I have been in a small tramp of 1,500 tons when I had to do it.

By the Court:

Q. What is the size of the *Kensington?* A. 8,000
150 tons.

Q. Is that burden or register? A. That is gross; 8,400, I think it is, gross.

Q. What is her length? A. 480 feet I think it is.

Q. Beam? A. Beam, 61 feet—62 feet.

Q. Depth of hold? A. Depth of hold would be about—I really couldn't tell you for sure, I forget.

By Mr. Ward:

Q. When was she built and where? A. She was
151 built in Glasgow at Clyde Bank.

By the Court:

Q. What year? A. She is four years old now; this was in 1894.

Q. Is she a ship of good class? A. Oh, yes; 100 A^1 at Lloyds.

By Mr. Ward:

Q. Great carrier? A. Yes. Carries 10,000 tons weight.

152

By the Court:

Q. Did you have other passengers? A. A fair number for that time of the year.

Q. How many did you have? A. I really forget. I should say about—something in the neighborhood of 40 in the cabin and about 150 or 160 in the steerage.

By Mr. Ward:

Q. During that voyage were there, or were there

not, periods of time when the passengers couldn't go on deck?

MR. FOSTER: I object to that as irrelevant.

A. I gave an order not to allow passengers on deck.

MR. FOSTER: I move to strike that out as irresponsive.

Motion denied.

MR. FOSTER: I except. 154

Q. On what ground was that? A. For fear they would be getting hurt.

Q. Coming back to the 20th of December, what was the character of the sea itself? A. We described it as a mountainous sea, very heavy sea, confused.

Q. Did you ascertain at any time on that day whether any of the cargo or baggage had got adrift? A. Yes.

Q. Where did you first look? A. I first looked 155 amongst the steerage baggage.

Q. Where was that? A. Aft in No. 4.

By the Court:

Q. Do you know where the trunks of the libellants were placed? A. I do.

Q. Where were they? A. In No. 2 steerage. upper steerage, in the after part.

Q. Not in the hold? A. No, sir, not in the hold, no; in No. 2 steerage deck; of course the hold is under the orlop. 156

Q. In the upper steerage deck? A. In the upper steerage deck, yes, sir.

Q. No. 2? A. No. 2. That is the place used for passengers but was unoccupied.

By Mr. Ward:

Q. Why did you look first at the steerage passengers' baggage? A. Because it was impossible to get near the hatches where the cabin baggage was on account of the seas breaking aboard the ship.

Q. Where was the steerage passengers' baggage, in what part of the ship—aft? A. Aft, farther aft, yes.

Q. What was the condition of the steerage passenger's baggage? A. It was considerably broken up.

By the Court:

Q. Where was that stowed? A. No. 4, on the upper deck, in the steerage deck, lower steerage deck, No. 4 lower steerage deck. That is the third deck—

Q. Is that next above the orlop? A. Yes, sir.

By Mr. Foster:

Q. Third deck from the top? A. Third deck from the promenade.

By the Court:

Q. The libellants' baggage was stowed one deck above this? A. Above where the steerage was.

Q. I thought you said the baggage was stowed on the orlop deck? A. Oh, no, no, sir. I said the hold was under the orlop. This gentleman asked if it was in the hold, I said no, the hold was under the orlop.

Q. You found that baggage considerably smashed? A. Yes, sir.

By Mr. Ward:

Q. What time of day did you get at that baggage? A. Some time in the forenoon.

Q. You went and looked at that baggage? A. Not personally. I gave an order to the chief officer to go and investigate to see if there was any damage done.

By Mr. Foster:

Q. You didn't see that yourself? A. Not the steerage.

Mr. Foster: I move to strike that out.

The Court: If there was any report he may state it.

The Witness: The report was made to me.

By Mr. Ward:

Q. What part of the day did you examine or direct an examination to be made of the upper steerage deck? A. I directed an examination in the afternoon.

Q. Why didn't you do it before? A. The weather was moderating slightly and we were enabled to do it.

Q. Before that you couldn't do it? A. No, sir.

Q. Was any report made to you as to the condition of things?

Mr. Foster: Answer yes or no.

A. The chief officer reported to me so.

Q. Oblige my friend by saying yes? A. Yes.

By the Court:

Q. Did you examine it personally or send an officer to examine it? A. I done both, sir.

By Mr. Ward:

Q. What did you find to be the case when you got there? A. When I got down myself I found the place in a state of chaos.

Cross-Examined by Counsel for Libellants:

By Mr. Foster:

Q. This was the passengers' baggage? A. I am speaking of passengers' baggage and freight that was stowed there.

By the Court:

Q. Do you know what was stowed there besides trunks? A. There was cases of Dresden, I should call them, crates of Dresden and some Paris goods; light Paris things in cases.

By Mr. Ward:

Q. By "Dresden" do you mean china? A. By Dresden I mean china.

By Mr. Foster:

Q. Was there any paint or dye there? A. No.

By the Court:

Q. Case goods? A. Some case goods; Paris goods.

Q. In boxes of wood? A. Yes, sir.

By Mr. Foster:

Q. There was no paint packed there? A. No;
166 there was dye stowed in the lower hold, powdery stuff; in discharging the color may have spread over the deck.

Q. There was dye stowed in the lower hold? A. Yes, sir; aniline dye.

Q. In what condition, liquid or granular? A. Powder I guess. That was right in the bottom of the ship.

Q. How was that packed—covered over or simply packed in there loose? A. What do you call "covered
167 over?"

Q. Separated from the baggage? A. It wasn't in the same hold at all.

Q. A different hold? A. Certainly. In the lower hold, divided by three decks.

Q. Was that lower hold wet when you landed? A. No.

By the Court:

Q. When you examined this compartment where the
168 passengers' baggage was did you find any water there? A. Yes, sir.

Q. How much? A. It was principally caused by steam condensation. There was a steam pipe that had been carried away by the impact from the stuff, when it got adrift it carried away a steam pipe, that was the cause of the water, one of the heating exhaust pipes.

By Mr. Foster:

Q. When what got adrift? A. The baggage and cargo that was stowed in the place.

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Q. Is the *Kensington* a fast boat? A. What do you call a fast boat?

Q. I asked you. A. She is not a 20-knot ship.

Q. What is the best time in the month of December the *Kensington* ever has made? A. Tuesday morning.

Q. How many days is that? A. From Saturday to Tuesday.

Q. How many days? A. Ten days.

170

Q. What is the slowest time she has ever made?

By the Court:

Q. About how many knots will she make in ordinary sea weather? A. She will average 14 3-4 across the Atlantic; she will make good 15 knots in fine weather.

By Mr. Foster:

Q. The fastest time is ten days? A. She has been in very early on Tuesday morning.

171

Q. From Antwerp to New York? A. From Antwerp to New York.

Q. And at times it has taken her 14 days to cross? A. No; on Thursday is the latest time she has ever been in.

Q. That is 12 days? A. You can figure it.

Q. From the 23d to the 11th is 12 days? A. I don't know whether it was the 11th or not. I know she came in on Thursday.

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(The balance of the hearing taken in Chambers.)

Q. (Read to witness.) From the 23d to the 11th is 12 days. Isn't that 12 days? Please try to answer my question. A. Yes, it is 12 days.

Q. Do you mean to say no boat of that line has ever taken 12 days to cross from Antwerp to New York? A. I say that boat has not.

Q. Other boats have? A. I don't know. I was only in that ship that time.

Q. How many voyages have you made on that ship? A. Nine altogether now.

Q. All you can speak of is concerning the nine voyages you have made? A. Yes.

Q. Is that the first time you ever crossed the Atlantic in December? A. I said I had been twenty-three years at sea and I have been crossing the Atlantic the best part of that time every month, making 16 voyages
174 in a year in fast ships.

Q. Please answer my questions and not argue with me, (Question repeated.) Is that the first time you ever crossed the Atlantic in December? A. No.

Q. Isn't that one of the roughest months in the year? A. No.

Q. What is the roughest month in the year? A. January.

Q. What is the next roughest? A. December.

Q. These were head winds, these westerly winds,
175 weren't they? A. Northwest winds; the worse we had was north-northwest.

Q. When did you last see the third officer? A. I saw him two weeks ago.

Q. Where was he then? A. In Antwerp.

Q. In a hospital? A Yes.

Q. Did you talk with him? A. Yes.

Q. What was the nature of his illness, or don't you know? A. I don't know what the nature of his illness is; he can't walk.

176 Q. You had a long talk with him, did you? A. Yes.

Q. How long before that had you seen him? A. I saw him about two voyages previous to that, I called on him.

Q. He was sick then and you had a talk with him? A. Yes, sir. He has been laid up ever since.

Q. Is he still in the employ of the company? A. Yes.

Q. You are, too, are you not? A. Yes, sir.

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Mr. Ward: I offer in evidence the deposition of Maurice de Cock:

Mr. Foster: I object to the admission of the deposition on the ground that the witness failed or refused to answer the questions put to him on his cross-examination.

The Court: I receive that in accordance with the ruling at the beginning of the trial.

Mr. Foster: I except to the ruling,

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Mr. Foster: I object to the admission in evidence of the answer to the 6th interrogatory, upon the ground that the witness failed or refused to answer to the second cross-interrogatory fully as directed in said cross-interrogatory.

Objection overruled for the same reason as above stated.

Mr. Foster: I except.

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181

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE S. BLEECKER and another

vs.

The Steamship "KENSINGTON."

182

Testimony of M. MAURICE DE COCK taken before GEORGE F. LINCOLN, U. S. Consul at Antwerp, Belgium, on the 10th day of May, 1898:

First Interrogatory:

Please state your age, residence and occupation.

A. My age is 37 years, my residence at Antwerp; by occupation a lawyer, and Professor at the "Institut Superieur de Commerce."

183

Second Interrogatory:

If you say you are a lawyer, please state where and when you were admitted to practice as a lawyer?

A. At Antwerp in the year 1883.

Third Interrogatory:

Where are you entitled so practice as a lawyer?

A. Everywhere in the Kingdom of Belgium.

184 Fourth Interrogatory:

Where have you practiced as a lawyer, and of what bar are you a member?

A. Principally at Antwerp and I am a member of the Antwerp bar.

Fifth Interrogatory:

Have you any position in connection with a college, institute or university, and, if so, what, and how long have you had the same?

A. Yes; Paofessor at the "Institut Supérieur de Commerce," held continuously since 1884. 185

Sixth Interrogatory:

May, or may not, a carrier by the law of Belgium exempt himself by contract from liability for the negligence or default of his servants?

A. Yes; according to the laws of Belgium, he can.

Seventh Interrogatory:

Have there been any adjudications of Courts or Judges in Belgium which are reported upon the validity of the following provisions in a contract between a carrier and a passenger? 186

The shipowner or agent is not under any circumstances liable for loss, injury or delay to the passenger's baggage arising from any act, neglect or default of the shipowner's servants, whether on board the steamer or not.

A. I do not know any decision or adjudication of our Courts relative to the particular case in question, that is concerning the baggage of a traveler, but the underlying principle has been decided by our Court of "Cassation" in 1885, which decided that the liability of a carrier for the act of his servant, his neglect or default, does not concern public policy, but the liability can be limited or annulled entirely by contract. 187

Eighth Interrogatory:

If you say there have been, please refer to the case or cases and the book or books in which the case or cases may be found reported. 188

A. The first case in which the underlying principle was decided was rendered on November 12th, 1885, and will be found in the "Pasicrisie Belge" of the year 1885, first section, page 275.

Ninth Interrogatory:

Please state whether by the law of Belgium the fol-

189 lowing provision in a contract made in Belgium between one owning or operating a steamship sailing from Antwerp to New York and a person taking passage on the same at Antwerp is or is not valid and enforceable, namely :

The shipowner or agent is not under any circumstances liable for loss, injury or delay to the passenger's baggage arising from any act, neglect or default of the shipowner's servants whether on board the steamer or not.

190 A. Yes, such a provision is valid and enforceable.

Tenth Interrogatory :

Would it make any difference in your answer, and if so what, that the injury to the baggage occurred on the high seas as the result of bad or insufficient stowage of the same by the Company's servants at Antwerp before the ship sailed ?

A. No difference.

191 Eleventh Interrogatory :

Please answer as if interrogatories seventh, eighth, ninth and tenth were repeated to you in respect to the following clause in a contract made in Belgium between a carrier by steamer and a passenger taking passage at Antwerp for New York :

The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passenger's baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is here-
192 by valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure.

A. In answer to the seventh interrogatory regarding the clause cited in the eleventh interrogatory, I would answer no ; to the eighth interrogatory my answer is I cannot ; in answer to the ninth interrogatory I say yes the clause would be valid ; in reply to the tenth interrogatory I should say it would make no difference.

DISTRICT COURT OF THE UNITED STATES, 193

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY. 194

CROSS-INTERROGATORIES:

First Cross Interrogatory:

Do you know of any provision or provisions in the statutes, or code of Belgium, or any decision or decisions, or any opinion or opinions, of a Court of Justice of Belgium, which decides or decide, discusses 195 or discuss, determines or determine, regulates or regulate, affects or affect the validlty of, or recognize or recognizes the validity of such a contract as is referred to in the 6th interrogatory, or such a contract as is referred to in the 8th interrogatory or such a contract as is referred to in the 9th interrogatory attached to the commission herein?

A. I know of several decisions of our Courts which recognizes the validity of such a contract as is referred to in the sixth interrogatory. 196

Second Cross-Interrogatory:

If so, please to quote such statute or statutes, decision or decisions, code provision or provisions, opinion or opinions so far as it applies or they apply at length; and specify the volumes and pages of all publications within your knowledge which contain the same?

A. I quote the decision of the Court of "Cassation" rendered on the 12th day of November, 1885, of the

197 "Pasicrisie Belge," first section, edition of 1885, page 275; decision of the 14th day of February, 1895, found in the "Pasicrisie Belge," first section, edition of 1895, page 93; decision of the Court of Appeals of Brussels, rendered the 27th day of July, 1896, found in the volume entitled "Jurisprudence du port d'Anvers," published in 1897, page 35.

Third Cross-Interrogatory:

Are any contracts by the law of Belgium void be-
198 cause against public policy?

A. Yes.

Fourth Cross-Interrogatory:

If to your last cross-interrogatory you answer yes, name and describe every class of such contracts.

A. A contract containing a clause by which one of the parties agrees not to be held responsible even in case of malicious deceit would not be valid as against public policy.

199 A contract by which a workman or servant should bind himself or herself for life would not be considered valid but contrary to public policy.

A marriage contract which contains a provision that neither of the contracting parties shall bring a suit for divorce at any time or for any cause, would be void as contrary to public policy.

Any contract tending to modify the right of either parent derived from the marriage relation, the right of parents pertaining to the protection of the children,
200 their education, property rights, etc., cannot be modified by contract as being contrary to public policy.

201

Claimants' Ex. "A."

RED STAR LINE.

Regular Mail Steamers between
Antwerp & Philadelphia.

Antwerp and New York,
S. S. 25876
Exchange for S. C. A.
in conjunction with S. E.

Room 4, Berths 1 & 2
Scale 237 ½

202

Passengers names. Age.
Mrs. Bleecker, Miss Bleecker.
Stamp.

Paris on the 2nd of Dec. 1897.
This ticket is good for second cabin passage of the persons named in the margin, to wit:

Two adults——— children———-infants ——— servants by the British Steamship *Kensington* from Antwerp, on the 11th of December, 1897, ai 1 o'clock, P. M., unless prevented from unforseen circumstances with 20 cubic feet of personal baggage for each adult passenger, free of charge, excess being charged for at the rate of 125 francs per cubic foot.

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Notice to Passengers.

It is a condition upon which this ticket is granted and is mutually agreed for the consideration aforesaid that—

I. (*a*) The steamer has leave to sail or enter any port with or without pilot and although deviating from the voyage to tow and assist vessels in all situations or to be towed and to put back or into any port for any
206 purpose at the discretion of the master.

(*b*) If prevented by any cause from proceeding in the ordinary course to forward the holder of the ticket by any other vessel whether belonging to the same shipowner or not and whether bound to the original port of destination or not, the shipowner in the latter case paying any passenger's railway or steamboat fare or like expense to the point of destination.

(*c.*) The shipowner or agent are not under any cir-
207 cumstances liable for loss, death, injury or delay to the passenger or his baggage arising from the act of God, the public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the seas, rivers or navigation, accidents to or of machinery, boilers or steam, collisions, strikes, arrest or restraint of princes, courts of law, rulers or people, or from any act, neglect or default of the shipowner's servants, whether on board the steamer or not or on board any other vessel belonging to the shipowner,
208 either in matters aforesaid or otherwise howsoever. Neither the shipowner nor the agent is under any circumstances or for any cause whatever or however arising liable to an amount exceeding 250 francs for death, injury or delay of or to any passenger carried under this ticket. The shipowner will use all reasonable means to send the steamer to sea in a seaworthy state and well-found but does not warrant her seaworthiness.

(*d.*) The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket be-

yond the sum of 250 francs at which such baggage is 209
hereby valued, unless a bill of lading or receipt be
given therefor and freight paid in advance on the ex-
cess value at the rate of one per cent. or its equivalent
in which case the shipowner shall only be responsible
according to the terms of the shipowner's form of
cargo bill of lading, in use from the port of depart-
ure.

The shipowner or agent are not responsible to
any extent or under any circumstances for gold or
silver in whatever state, money, jewelry, precious 210
stones, watches, clocks, paintings, engravings, title
deeds or other writings, bills, bank-notes of any
country, orders, notes or securities for payment of any
money or of silks, furs, laces or cashmere in what-
ever state or any other valuable property of the like
description contained in any baggage unless declared
and the value thereof stated in writing and unless
the same be delivered into the personal custody of
the chief steward or person of the vessel and then
the ship-owner shall not be liable beyond the sum 211
of 250 francs or its equivalent unless freight be paid
in advance on any value exceeding the sum aforesaid
at the rate of one per cent. in which case the ship-
owner will carry the goods subject to the conditions
contained in the shipowner's form of cargo bill of
lading in use from the port of departure.

(*e.*) No claim shall be available against the ship-
owner or his property or the agent unless notice in
writing thereof with full particulars of the claim be 212
furnished to the shipowner within forty-eight hours
of the passengers being landed from the steamer at
the termination of the voyage or in case of the
voyage being abandoned or broken up within seven
days thereafter.

2.—According to the United States law of March
3rd, 1891, the following classes of emigrants shall be
excluded from landing: idiots, imbeciles, insane, crip-
ples, or persons afflicted with bodily infirmities, con-
sumption and persons with loathsome or contagious

213 diseases, criminals, convicts and inmates of poor houses or persons who are likely to become a public charge, persons unable to work having no friends to care for them, unaccompanied women with children when they are not expected by their husbands or relatives who will care for them, girls with children or in a state of pregnancy; laborers who previous to their immigration have been engaged for work in the United States.

3. This ticket must be produced to any of the Com-
214 pany's servants when required, and given up on demand at the sailing of the vessel, and the ticket is only available for the date for which it is issued. If through any act of the passenger it is not used for that date, or lost or mislaid, it is cancelled, and the passage money absolutely forfeited.

4. Every responsibility hereunder of the shipowner or agent shall be limited to that period only whilst a passenger and his baggage are on board the Trans-
215 atlantic Ocean Steamship or its steam tenders. All other carriage from the point of departure to the point of destination will be subject to the ordinary conditions of carriage of each railway or transportation company employed for the purpose or to any special condition required by them.

5. If passengers are booked from or to any other places than the steamship's ports of departure and destination it is for their convenience only and at their risk in every respect.

216 All questions arising hereunder are to be settled according to Belgium Law with reference to which this contract is made.

JOHN MACKLIN,
For General European Agents.

Passage money...	475 00	Received the balance
Received.....	150 00	RED STAR LINE,
		Antwerp.
Balance to be paid before embarking.....	325 00	Fr. Otto
		For General European Agents

Dec. 1897 Cabin Department. 217

No receipt will be recognized on board if not signed by the agent who issued the ticket or by the office in Antwerp.

Parcels, chairs and baggage of every description sent in advance must be addressed to Von der Becke & Marsily, passenger department Antwerp (Bassins); the same 218

must be claimed at the office latest on the day before sailing to insure delivery on board.

(On margin.)

Von Der Becke & Marsily, General European Agents, Antwerp.

International Navigation Company General Agents, 6 Bowling Green, New York; 307 Walnut Street, Philadelphia; 32 South Clarke St., Chicago 219

(On back.)

Blank for information required by U. S. authorities not filled in.

Libellants' 1—(For Identification).

Received for R. R. carriage and charges on baggage or : 220

Empfagen für Bahnfracht und Spesen oder auf Gepack :

Recu pour port et frais sur bagages ou :

L/V		fr.	"
"	21358	"	24"
"		"	"
"		"	"

221 R. R. Baggage check " "
Storage Receipt " "
: Ocean freight
For : Ocean freight on excess of
Baggage " "
:

Clts Ex. B Total fr.

Weight, contents and value unknown and shipped by the Red Star Line steamer, subject to the conditions
222 contained in the Co's ticket and bill of lading.

RED STAR LINE.
Antwerp
Dec. 97
Caisse.

223

224

225

UNITED STATES DISTRICT COURT.

Southern District of New York.

Lizzie Starins Bleecker and Elsie L. Bleecker,

against

The Steamship "Kensington," her boilers, engines, &c.; The International Navigation Company.

226

In Admiralty. Passengers' Baggage.

Roger Foster for Libellants.
Robinson, Biddle & Ward for Claimant.

Brown, J.: 227

The above libel was filed by Mrs. Bleecker and her daughter to recover for the loss of their trunks and personal effects upon their passage by the British Steamship *Kensington* of the Red Star Line, from Antwerp to New York in December, 1897. The defense was a loss by sea perils, and second, a limitation to the sum of 250 francs under the provisions of the passenger ticket.

The libellants' trunks were stowed in what was known as No. 2 upper steerage in the after part of the third deck above the hold, sometimes used for passengers. A few other trunks were stowed there and some crates of china. The steamer sailed from Antwerp December 11th. The voyage was extremely rough. For most of the time the passengers were not allowed on deck. On December 20th the steamer met a very heavy gale in which she labored heavily and was obliged to lie to for 14 or 15 hours, which had not previously occurred in the master's experience 228

229 of 23 years. The steamer was a first-class ship of about 8,000 tons. In this gale some of the baggage got adrift, both in No. 2 steerage and in the steerage on the deck below. As soon as it was possible the apartment where the libellants' baggage was stowed was examined, and the captain describes it as being in a state of chaos. Trunks and crates were broken and damaged by water in the apartment, coming from the condensation of steam from a steam pipe which had been carried away in the storm.
230 The vessel arrived in New York on the morning of December 23rd. The value of the contents of the trunks was above 250 francs for each of the two passengers, and it is stated in the libel to have been of the value of $2,000. The libellants had been traveling in Europe for about a year. The evidence leaves no doubt that the ticket for the two passengers, which is marked Claimant's Exhibit A, was purchased by Mrs. Bleecker in Paris on December 2nd. She testifies that at that time she paid part of the money for
231 the passage and afterwards on arrival at Antwerp paid the rest. The ticket is dated at Paris, December 2nd, 1897; and there is a stamped receipt beneath the signature of the ticket, dated at Antwerp, December 10th, for the balance of the passage money. This accords with the testimony of Mrs. Bleecker, that she paid this balance at the office of the Company in Antwerp on the day before the steamer sailed, and at the same time delivered her trunks and received her baggage check, stating that it was shipped "subject to
232 the conditions contained in the Company's ticket and bill of lading."

In the body of the ticket, under the head of "Notice to Passengers", it is stated as follows:

"It is a condition upon which this ticket is granted and is mutually agreed for the consideration aforesaid that." * * * Here follow ten paragraphs in type somewhat smaller than the preceding type, but perfectly clear and legible, stating numerous conditions. These ten paragraphs are followed by the provision:

"All questions arising hereunder are to be settled according to Belgian law with reference to which this contract is made"; after which is the signature of the Company's agent. The third paragraph provides that "the shipowner or agent are not under any circumstances liable for loss, default, injury or delay to the passenger or his baggage, arising from the act of God, public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the sea, rivers, or navigation, accidents to or of machinery, boilers or steam" * * * "or from any act, neglect or default of the shipowners' servants, whether on board the steamer or not." 233 234

"The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent. or its equivalent."

235

At the time when her baggage was delivered to the Company at Antwerp on the 10th of December, Mrs. Bleecker made no statement of its value, and paid no freight on its excess over 250 francs.

No evidence was introduced as to the particular mode of stowage, except that it was stowed by the Company's stevedore at Amsterdam under the supervision of the third officer, who at the time of the trial was sick there.

236

1. Contrary to the libellants' contention, I must hold upon the authorities that a ticket of the character above described for a transatlantic passage is a unilateral contract, and like a bill of lading is binding upon the person who receives it, so far as its provisions are reasonable and valid. It is essentially of the same character as the ticket in the case of Steers *v.* Liverpool, N. Y. & P. S. S. Co. (57 N. Y., 1), where Johnson, Justice, in reference to a claim similar to this observes:

237 "The plaintiff by her agent, was an applicant for a passage to Europe by the defendant's ship, the voyage to be commenced at a future day, and received on payment of the price a written engagement from the defendant expressing its undertaking. A printed *fac simile* of this paper is before us, and although part of it is in smaller type than the rest, no part of it is in such type as to suggest to the mind the idea of concealment as the possible motive for its being so printed." * * * "Looking to the course of business, the Court may
238 take notice that an engagement for a voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an Express Company's receipt for baggage or for freight. There is, therefore, no room in such a case for the suggestion that the party is surprised into a contract, when he supposes himself only to be taking a token indicative of his right. The paper in evidence ought, therefore, to be regarded as having received the mutual assent of the parties, and as being, as its language pur-
239 ports, their contract touching the voyage in question."

I find nothing later diminishing the force of these observations. See Zimmer *v.* N. Y. C. & H. R. R. Co., 137 N. Y., 460, 462.

2. One of the exemptions specified in this ticket or contract is losses "by perils of the sea," and upon the evidence, if preliminary proof of good stowage had been given, I think a *prima facie* case of loss by sea perils would have been made out, which it was incum-
240 bent on the libellants to rebut by proof of negligence in the ship. The evidence leaves no doubt that the passage was one of very extraordinary severity, such as might account naturally for what happened, viz., the baggage getting adrift and breaking the steam pipe, even though the baggage was well stowed; but it might also happened from poor storage, of which some evidence was sought to be given, though I do not regard it as of much weight. There is no direct evidence of the mode of stowage, but only that the baggage was stowed by the regular stevedores of the line.

It is urged that this furnishes a reasonable inference 241
of customary good stowage; and when there is proof, as there is in this case, of very extraordinary weather and rolling of the ship, such as would naturally cause baggage stowed with ordinary care to get adrift, it is claimed that the authorities indicate that the burden of proof is on the libellants to show some negligence, but for which the loss might nevertheless have been avoideed. See Clark *v.* Barnwell, 12 How., 272. 280. The Supreme Court in that case approved the ruling of Lord Chief Justice Denman in Muddle *v.* 242
Stride, 9 Car. & P., 380: "That if on the whole it be left in doubt what the cause of the injury is, or if it may as well be attributable to perils of the sea as to negligence, the plaintiff cannot recover," * * * "but the jury were to see clearly if the defendants were guilty of negligence before they could find a verdict against them." In the case of the *Neptune* (6 Blatch., 193), the same point was ruled where a steamship "encountered on the voyage an unusually violent storm which fully accounted for the damage within an 243
exception in the bill of lading;" and it was held by Mr. Justice Nelson that this threw the onus on the shipper to establish carelessness or negligence on the part of the master or owners of the vessel leading to the particular loss; and for failure to establish this a decree dismissing the libel was affirmed. See the *Fern Holm*, 24 Fed., 502, 503; the *Portuence*, 35 Fed., 670. These cases, however, do not dispense with the usual proof of good stowage by the ship. To assume proper stowage upon mere inference, and to throw upon a ship- 244
per or passenger the burden of proving the contrary, without any proof by the ship, seems unreasonable and inequitable, considering that proof on this subject is peculiarly within the power of the ship to produce and comparatively easy for her, but difficult if not often impossible for the passenger or shipper. Proper stowage, moreover, is essential to seaworthiness as respects cargo, or baggage, and hence this essential preliminary condition of seaworthiness should have been established by the ship

245 by proof of proper stowage, just as in the *E. I. Morrison* (151 U. S., 210), it was held necessary to be established by proof of proper inspection. In Clark *v.* Barnwell, *supra*, it is expressly stated in the opinion of the Court (p. 281) that the stowage was good. The record and the opinion of Shipman, J., in the court below in the case of The *Neptune* show the same; and the same appears in the other cases above cited. This branch of the defense, therefore, I cannot sustain.

246 3. The limitation of liability to 250 francs, is a limitation which it was competent for the defendant Company to make. Hart *v.* Pa. R. R. Co., 112 U. S., 331. The libellants are chargeable with notice of this provision whether they read the contract or not. The ticket was in their possession for more than a week before the ship sailed, and before the baggage was delivered to the Company. Every European traveller knows how much more exacting there than with us are
247 the usual conditions as respects the transportation of luggage, and the extra charges therefor. There was nothing to justify the libellants in supposing there were no restrictions as to baggage; and they had abundant opportunity to examine the clear provisions of their ticket; and if they were ignorant of them it was by their own choice. It is not unreasonable that carriers should refuse for an ordinary charge to hold themselves answerable for an extraordinary or indefinite responsibility, and to charge extra compensation for increased
248 risks; if travellers pay no attention to the provisions on these points incorporated into the contract of carriage, it is right that they should themselves bear the additional risk.

In the recent case of Calderon *v.* Atlas S. S. Co. (Apl. 25, 1898), the Supreme Court in refusing to the carrier the benefit of any limitation, did so upon the distinct ground that the limitation there sought was against *all* liability and recognized the validity of such a limitation as is here provided.

4. Proof was taken by depositions that the Belgian

law sustains exemptions of carriers from responsibility for the negligence of servants when the contract so provides. In the answer to the cross interrogatories on this point, the witness did not state at length the authorities and decisions in the sense in which the libellants' consel intended by his interrogatories that the witness should state; but the answer is in such form, with a reference to the authorities relied upon, that I do not think there was any intent on the witness' part to evade the question, which in translation into another language may have appeared only to call for the references to the authorities instead of the language of the decisions; and indeed the language of the decisions was not in terms asked for by the interrogatories. I do not think the failure to answer the cross interrogatories more fully, therefore, detracts from the credit to be given to the deposition, which is in fact in accord with the general law of Continental Europe. The libellants' counsel, however, in preferring to proceed to trial rather than incur the delay of sending the commission back to the commissioner for further answers on this point, in effect waived any objection on this score. 249 250 251

This contract of carriage was, however, to be performed in part within our jurisdiction, by the delivery of the baggage here in good condition; and though the presumed negligence as respects proper stowage was negligence abroad, it cannot be said that none of the consequent damage occurred within our jurisdiction. Upon the evidence I think that damage to the extent of at least 250 francs, as to each libellant, did occur here; so that the cause of action in part arose here; and in such cases our own law, as respects exemptions that are against public policy must, I think, control. It is not competent for the respondent to defend a tort committed here by proof of a foreign contract void as against our public policy. It is a question of comity purely; and comity does not require us to reverse our own policy as respects torts committed within our own territorial jurisdiction. 252

I have heretofore held that the Harter Act has

253 reference to the transportation of "cargo," and does not apply to the transportation of passengers, nor to their baggage when not shipped as cargo, or on payment of freight. (*Rosedale* and *Oregon*, March 28th, 1898.)

Decree for the libellants for the equivalent of 250 francs each, with interest and costs.
July 6/98.

254

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 5th day of October, 1898.

Present—Honorable ADDISON BROWN, District Judge.

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255 LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants,

vs.

The Steamship "KENSINGTON," her boilers, engines, etc., INTERNATIONAL NAVIGATION COMPANY,

Claimant.

256

This cause having coming on to be heard upon the pleadings and proofs, and argued and submitted by the advocates of the respective parties, and due deliberation had, and an opinion filed herein that the libellants should recover the equivalent of 250 francs each with interest and costs,

Now, on motion of Roger Foster, proctor for the libellants, it is

Ordered, adjudged and decreed that the above-named

libellants, Lizzie Stearns Bleecker and Elsie L. Bleecker, do have and recover against the steamship *Kensington*, her boilers, engines, tackle, apparel and furniture, the sum of $96.20, with interest from the 23rd day of December, 1897, and costs amounting to $51.30, making in all the sum of $151.59, for which sum, so as aforesaid hereby awarded to the libellants the said steamship *Kensington*, her boilers, etc., are hereby condemned. 257

And on like motion it is further

Ordered: that the stipulators for costs and value on behalf of the said steamship *Kensington*, her boilers, etc., and her claimant, cause the engagements of their several and respective stipulations to be fulfilled, or, unless an appeal be taken within the time limited by law and the practice of this Court from this decree, that they show cause on a notice of four days why execution for the above decreed amount should not issue against them, their goods; chattels and lands. 258

ADDISON BROWN. 259

Objections to form waived without prejudice to appeal.

ROGER FOSTER,
Proctor for Libellants.

Form approved.

ROBINSON BIDDLE & WARD,
Procs. for Clt.

[Endorsed :]—Final Decree.—Filed October 10, 1898. 260

261 DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

LIZSIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants,

AGAINST

The Steamship "KENSINGTON," her boilers, engines, etc., THE INTERNATIONAL NAVIGATION COMPANY,

262 Claimant.

Sirs:

Please take notice that the libellants above named hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from so much of the final decree made herein on the 5th day of October, 1898, and entered and filed in the office of the Clerk of the District Court of the United States for the Southern

263 District of New York, the 10th day of October, 1898, which does not decree to each of the above named libellants severally damages in the sum of two thousand ($2,000) dollars, and from that part of said decree which limits the recovery of each of said libellants for damages to the sum of forty-eight and 10/100 ($48.10) dollars. And take further notice that the appellants herein do not intend to introduce new pleadings and proofs in said Circuit Court of Appeals for

264 the Second Circuit.

Dated New York, October 19th, 1898.

Yours &c.,

ROGER FOSTER,

Proctor for Libellants and Appellants,

35 Wall Street, New York.

To ROBINSON, BIDDLE & WARD,

Proctors for Claimant.

and to

The Clerk of the District Court of the United States for the Southern District of New York.

[Endorsed:] — Libellants' Notice of Appeal. — Filed Oct. 29th, 1898.

265

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

In the Matter

OF

The Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER.

266

ASSIGNMENT OF ERRORS.

Afterwards, to wit: on the day of October in the year of our Lord eighteen hundred and ninety-eight, at the October term for eighteen hundred and ninety-eight of the Circuit Court of Appeals of the United States for the Second Circui , in the County and State of New York, comes the said Lizzie Stearns Bleecker and Elsie L. Bleecker, by Roger Foster, their 267 attorney, and say that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

I.—The final decree is erroneous in that it does not decree payment to the above-named libellants and appellants of the sum of $4,000 with interest and costs.

II.—The final decree is erroneous in that it decrees payment to the said libellants and appellants of the sum of only $96.20 with interest and costs amounting 268 to $51.50 making in all the sum of $151.59 instead of the sum of $4,000 with interest and costs.

III.—The District Judge erroneously held that the ticket marked Claimant's Exhibit A was a contract.

IV.—The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of The International Navigation Company was binding upon the said Lizzie Stearns Bleecker and Elsie L. Bleecker.

269 V.—The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of claimant to 250 francs was a limitation which it was competent for the defendant company to make.

VI.—The District Judge erred in holding that the language in said ticket, Claimant's Exhibit A (marked "d") which purported to provide that the shipowner or agent should not be liable for injury to passengers' 270 baggage beyond the sum of 250 francs unless extra freight was paid for the same, limited the liability of the steamship *Kensington*, her boilers, engines, etc., in a Court of Admiralty for injury to such baggage.

VII.—The District Judge erred in holding that the language in said ticket, which purported to provide that the shipowner or agent should not be liable for injury to passengers' baggage beyond the sum of 250 francs, unless an extra charge was paid for the same, limited the liability of the said steamship, her boilers, 271 engines, etc., in case such liability was caused by the negligence or misconduct of the officers or crew of the said steamship who stored the said baggage in the said steamship.

VIII.—The District Judge erroneously held that the act of Congress approved on the 13th day of February, 1893, namely: Chapter 105 of the acts of the second session of the Fifty-second Congress, which is published in 27 United States Stat. at 272 Large at page 445, known as the Harter Act, did not apply to the transportation of the baggage of passengers which was not separately shipped as cargo, and for which no freight in addition to the passage money was paid.

IX.—In the testimony of the libellants' witness, Lizzie S. Bleecker, the counsel for the libellant asked the following question:

"What were the contents of those trunks, what was their value?" The counsel for the claimant objected

to the Court passing upon the question of damages, and the Court sustained the said objection and excluded the said question, to which the libellant duly excepted. The Court erred in sustaining the objection. 273

X.—In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered the passage ticket claimant's Exhibit A, in evidence, which was admitted by the Court. The counsel for the libellants objected to the admission of the ticket in evidence as irrelevant and immaterial and because the conditions therein contained are against the public policy. The Court overruled said objection and admitted said ticket in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said ticket in evidence. 274

XI.—In the course of the cross-examination of the libellants' witness, Lizzie Stearns Bleecker, the counsel for the claimant offered in evidence the baggage receipt, Claimant's Exhibit B. The counsel for the libellants' objected to the admission of the baggage receipt as irrelevant, immaterial and incompetent. The Court overruled said objection and admitted said baggage receipt in evidence, to which the libellants duly excepted. The Court erred in overruling said objection. 275

XII.—At the conclusion of the testimony, the claimant's counsel offered in evidence the deposition of Maurice de Cock. The counsel for the libellants duly moved to suppress said deposition and objected to the admission of the deposition on the grounds that the witness failed or refused to answer one of the questions put to him on his cross-examination. The Court denied the motion and admitted in evidence said deposition to each of which rulings the counsel for the libellants separately duly excepted. The Court erred in denying said motion, and in admitting said deposition in evidence. 276

XIII.—The counsel for the libellants separately and specifically objected to the admission in evidence of

277 the answer to the sixth interrogatory in said deposition upon the ground that the witness had failed or refused to answer the sixth cross-interrogatory fully as directed in said cross-interrogatory. The Court overruled said objection and admitted said answer in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said answer in evidence.

Wherefore the said Lizzie S. Bleecker and Elsie L. Bleecker pray that the said decree may be modified so
278 as to decree that the libellants be severally awarded as damages the sum of $2,000 to each of them with interest and costs in the District Court and the costs in the United States Circuit Court of Appeals.

ROGER FOSTER,
Proctor for Libellant, Appellant,
35 Wall Street, New York.

[Endorsed:]—Libellants' Assignment of Error. Filed October 29, 1898.

279

280

281

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants,

vs.

The Steamship "KENSINGTON," her boilers, etc. INTERNATIONAL NAVIGATION COMPANY,
Claimant.

282

Please take notice, that the International Navigation Company, the claimant above named, appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree entered in the above-entitled action, and filed in the office of the Clerk of the above entitled Court on the 10th day of October, 1898, and from each and every part of saie decree. 283

Dated Borough of Manhattan,
City of New York, November 1st, 1898.

Yours, etc.,
ROBINSON, BIDDLE & WARD,
Proctors for International Navigation Company,
Claimant.

To ROGER FOSTER, ESQ., 284
Proctor for Libellants,
SAMUEL H. LYMAN, ESQ.,
Clerk of the United States District Court.

[Endorsed:]—Claimant's Notice of Appeal.—Filed November 1, 1898.

285 UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

LIZZIE STEARNS BLEECKER and another,
Libellants-Appellants,

AGAINST

286 The Steamship "KENSINGTON," INTERNATIONAL NAVIGATION COMPANY,
Claimant-Appellant.

The claimant-appellant assigns error in the decision of the Court below as follows:

1st. Because the learned Judge erred in holding that the claimant was bound to give proof of good stowage.

287 2nd. Because the learned Judge erred in finding that damage to the extent of at least 250 francs as to each libellant occurred in this country.

3rd. Because the learned Judge erred in holding that the cause of action in part arose in this country.

4th. Because the learned Judge erred in holding that the exemption contained in the bill of lading from any liability on the part of the claimants for the acts, default or neglect of its servants did not protect the
288 claimant from any liability for the injury to the baggage of the libellants.

5th. Because the learned Judge erred in not dismissing the libel with costs.

6th. Because the learned Judge erred in awarding to the libellants a decree for the equivalent of 250 francs each with interest and costs.

ROBINSON, BIDDLE & WARD,
Proctors for Claimant-App't.

[Endorsed:]—Claimant's Assignment of Error.—Filed November 81, 1898.

289

UNITED STATES OF AMERICA,
Southern District of New York. } ss. :

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants and Appellants,

vs.

The Steamship "KENSINGTON," her boilers, engines, etc., THE INTERNATIONAL NAVIGATION COMPANY,
Claimant and Appellant.

290

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify, that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to 291
Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York,
[SEAL.] this 13th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the independence of the said United 292
States the one hundred and twenty-third.

SAML. H. LYMAN,
Clerk.

United States Int. Revenue Stamp. Cancelled.

73a

293

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, SAMUEL H. LYMAN, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify, that the writings annexed to this certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

294

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 30th day of January, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

[STAMP.]

295

SAMUEL H. LYMAN,
Clerk.

[SEAL.]

296

73a

297

At a Stated Term of the United States District Court held at the United States Court Building in the City of New York, for the Southern District of New York, on the day of April, 1898.

Present—Hon. ADDISON BROWN, Justice.

298

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY.

299

The libellants above named having moved for leave to amend their libel herein, after hearing Roger Foster, Esquire, proctor for libellants in support of said motion, and Messrs. Robinson, Biddle & Ward, proctors for claimant in opposition thereto, it is hereby

Ordered, that said motion be and the same hereby is granted by striking from the paragraph designated as second in the libel herein, after the words "with the libellants," and before the words "and thereby," the following words: "Embraced in a passage ticket then
300 duly delivered by them to said libellants," so that said paragraph second shall read as follows: "Second: Heretofore, and on or about the 9th day of December, 1897, the said The International Navigation Company entered into a contract with the libellants, and thereby, for a valuable consideration to them paid by the libellants, agreed to and with the libellants to carry and transport the libellants from the port of Antwerp in the Kingdom of Belgium to the port of New York in the United States of America by the said steamship *Kensington*, and by said steamship to carry and transport with safety to said

port of New York, and there deliver to the libellants, 301
in good order and condition, the personal luggage or baggage of the libellants."

And it is further

Ordered, that the original libel heretofore filed and the answer to the same heretofore filed by the claimant, The International Navigation Company, remain as the pleadings in this case with said amendment without the service or filing of any new or amended pleadings herein, unless the claimant may desire to file a new answer in which case it may do so within twenty (20) days from 302
the date of the entry of this order.

Objections to form waived.

New York, April 12, 1898.

ADDISON BROWN.

ROBINSON, BIDDLE & WARD,
Procs. for Claimant.

ROGER FOSTER,
Proctor for Libellants.

[Endorsed:]—Order amending Libel. 303

304

73 C

Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

No. 147.—October Term, 1898. Submitted April 21, 1899. Decided May 25, 1899.

Appeal from the District Court of the United States for the Southern District of New York.

Before Judges Wallace, Lacombe and Shipman. 306

Lizzie Stearns Bleecker and Elsie L. Bleecker

against

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Company.

These are cross appeals from a decree of the District Court, Southern District of New York, 307 holding the libellants entitled to recover the equivalent of 250 francs apiece. The facts sufficiently appear in the opinion:

"Lacombe, Circuit Judge: On December 2, 1897, "the libellants, citizens of the United States and "residents of New Jersey, being at the time in "Paris, France, purchased of an agent of the "claimant, a New Jersey corporation, a ticket for "their passage from Antwerp to New York by the "British steamer Kensington, of the Red Star "Line. They proceeded to Antwerp, where on "December 10th they paid the balance of the pur-

308 "chase money, delivered their trunks to the vessel "and received a baggage check, stating that said "trunks were shipped 'subject to the conditions "contained in the company's ticket and bill of "lading.' The ticket, which is dated December 2, "1897, begins with a recital of the names of the "passengers and numbers of state-rooms and "berths, and states that it 'is good for second- "cabin passage of the persons named in the mar- "gin * * * by the British steamship Kensing- "ton from Antwerp on the 11th of December, "* * * unless prevented from unforeseen cir- "cumstances, with 20 cubic feet of personal bag-
309 "gage for each adult passenger free of charge, "excess being charged for at the rate of 125 francs "per cubic foot.' Immediately succeeding is the "caption, 'Notice to Passengers,' and these words, "'It is a condition upon which this ticket "is granted, and it is mutually agreed for the "consideration aforesaid, that—' Here, as the "District Judge finds, follows 10 paragraphs in "type somewhat smaller than the preceding type, "but perfectly clear and legible, stating numerous "conditions. The whole concludes with the clause: "'All questions arising hereunder are to be settled "according to Belgian law, with reference to which "this contract is made.' Then follows the signa-
310 "ture, 'John Macklin, for General European "Agents, The relevant conditions included in the "above-mentioned 10 paragraphs are these: '(c) "The shipowner or agent are not under any cir- "cumstances liable for loss, death, injury or delay "to the passenger or his baggage arising from the "act of God, the public enemies, fire, robbers, "thieves of whatever kind, whether on board the "steamer or not, perils of the seas, rivers, or navi- "gation, accidents to or of machinery, boilers, or "steam, collisions, strikes, arrest or restraint of "princes, courts of law, rulers, or people, or from "any act, neglect, or default of the shipowners'

"servants, whether on board the steamer or not, or 311
"on board any other vessel belonging to the ship-
"owner. * * * The shipowner will use all rea-
"sonable means to send the steamer to sea in a
"seaworthy state and well found, but does not
"warrant her seaworthiness. (*d*) The shipowner or
"agent shall not under any circumstances be liable
"for any loss or delay of or injury to passengers'
"baggage carried under this ticket beyond the sum
"of 250 francs, at which such baggage is hereby
"valued, unless a bill of lading or receipt be given
"therefor, and freight paid in advance on the ex-
"cess value at the rate of one per cent., or its
"equivalent, in which case the shipowner shall 312
"only be responsible according to the terms of the
"shipowner's form of cargo bill of lading in use
"from the port of departure."

"When their baggage was delivered to the com-
"pany at Antwerp on December 10th, no state-
"ment was made of its value, and no freight was
"paid on its excess over 250 francs. The trunks
"were stowed in the after part of what is known as
" 'No. 2, Upper Steerage Deck.' Upon the arrival
"of the steamer in New York it was discovered
"that the libellants' trunks and baggage of other
"passengers which, with some crates of china, had
"been stowed there had been broken to pieces, and
"the contents of the trunks destroyed by water, 313
"dye and dirt."

"1. The first contention of the claimant upon
"this appeal is that the District Judge erred in
"holding that the claimant was bound to give proof
"of good stowage. There was evidence that the
"voyage was one of exceptional roughness; that
"on December 20th the steamer labored so heavily
"that she had to heave to for 14 or 15 hours, which
"had not previously occurred in the master's ex-
"perience of 23 years; that she is a steamer of over
"8,000 tons gross register, from 14 to 15 knots

"speed, and accustomed to make the trip in 10
"days, but on the voyage in question she took 12
"days; that the clinometer indicated that she
"rolled from 38 to 45 degrees either side. Upon
"these facts it is insisted that enough appears to
"show that the loss occurred by a peril of the sea,
"and that in this stage and posture of the case the
"burden was upon the plaintiffs to establish neg-
"ligence of some kind on the part of the ship. In
"support of this contention, counsel cites: Clark
"vs. Barnwell, 12 How., 272; The Victory, 168
"U. S., 423; 18 Sup. Ct., 149; The Neptune, 6
"Blatchf., 193; Fed. Cas., No. 10,118. There was
315 "evidence, however, given by one of the libellants'
"witnesses, who was present when the hatch was
"removed, that he descended immediately, and
"that, although he examined carefully, he could
"find no indications that the contents of No. 2
"upper steerage had been lashed or otherwise se-
"cured against movement in rough weather. It is
"true that at the time of his examination the con-
"tents of the compartment were in such a chaotic
"state that the inferences to be drawn from his
"failure to discover any evidence of lashing down
"are not particularly strong; but, in the absence
"of any testimony whatever on the part of the
"ship as to how such contents were stowed and se-
316 "cured against the movements incidental to rough
"weather (the compartment was not filled), the
"evidence is sufficient to support the libellants'
"contention."

"2. The claimant further contends that it should
"have the benefit of the provision in the contract
"of carriage exempting it from liability for the
"act, neglect or default of its servants; such stip-
"ulation being authorized by the Belgian law. In
"reply it is sufficient to refer to Worsted Mills
"v. Knott, 27 C. C. A., 326; 82 Fed., 471, in which
"a majority of this Court held that such a stipu-

"lation, being against the public policy of this 317
"country, was not enforceable by its Courts. We
"are unanimous in the opinion that it cannot be
"enforced where both parties to the contract are
"citizens of the United States, and the place of
"completion of the contract is within this country.
"We concur also in the conclusion of the district
"Judge that the provisions of the second section of
"the Harter Act as to bills of lading and shipping
"documents do not apply to passenger tickets."

"3. The main contention of the libellants is that
"the stipulation in the ticket against liability for
"injury to baggage in excess of the stated value of
"250 francs is void, either because it did not amount 318
"to a contract, or because it is contrary to public
"policy, or because the sum named (250 francs)
"is unreasonably small. The same question was
"discussed by this Court in the Majestic, 9 C. C.
"A., 161; 60 Fed., 624. That decision was re-
"versed by the Supreme Court (The Majestic, 166
"U. S., 375; 17 Sup. Ct., 597) on the ground that
"the conditions or limitations relied upon in that
"case 'were not included in the contract proper, in
"terms or by reference;' being printed on the back
"without any reference in the contract to such in-
"dorsement. In the case at bar, however, the
"clause relied upon is plainly included in the con- 319
"tract itself, above the signature of the ship's
"agent; and the reasoning of the opinion of this
"Court in the Majestic, *supra*, applies. However
"unreasonable would be a 'condition' attempting
"to relieve the carrier entirely from liability in ex-
"cess of some named amount, there seems to be no
"impropriety in the carrier's requiring the passen-
"ger to declare the value of his baggage in excess
"of such named amount, to take regular bill of
"lading therefor, and to pay for its transportation
"in proportion to its value, with the proviso that,
"if he fails so to do, the carrier shall not be liable.

320 "As to the question whether the sum named (250
"francs) is too small, the Supreme Court, in the
"Majestic, *supra*, intimated some doubt as to the
"reasonableness of £10 in the case of a first cabin
"passenger's baggage, but rendered no decision
"thereon. In view of the circumstance that the
"condition complained of contained an offer to
"carry the excess value under a regular bill of
"lading, we are not prepared, in the absence of
"authority, to hold that 250 francs is an unreason-
"able valuation for personal baggage of a second
"cabin passenger not thus carried."

"The proposition contended for, that the clause
321 "in question provides only for the relief of the
"'shipowner or agent,' and does not inure to the
"benefit of the ship itself, which in this suit is
"called upon to respond only because, as is al-
"leged, the owner did not fully carry out its con-
"tract, seems to be without merit. The decree of
"the District Court is affirmed, but, since both
"sides appealed, without interests or costs."

ROGER FOSTER,
For the Libellants.

H. GALBRAITH WARD,
For the Claimant.

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At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the city of New York, on the 6th day of June, one thousand eight hundred and ninety-nine. 323

Present—Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

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LIZZIE S. BLEECKER, *et. al.*,
Libellants-Appellants,

vs.

THE STEAMSHIP "KENSINGTON," her engines, etc., International Navigation Company,
Claimant-Appellant.

Appeals from the District Court of the United States for the Southern District of New York.

This cause came to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by Counsel. 325

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is affirmed, without interest or costs.

E. H. L. It is further ordered that a mandate issue to the said District Court in accordance with this decree.

326 United States of America, Southern District of New York, } ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify, that the foregoing pages, numbered from 1 to 80 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Lizzie S. Bleecker, *et. al.*, libellants-appellants against S. S. "Kensington;" International Navigation Company, claimant-appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of
327 the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 27th day of September, in the year of our Lord One thousand eight hundred and ninety-nine, and of Independence of the said United States the one hundred and seventy-fourth.

WM. PARKIN,
Clerk.

[SEAL.]

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UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which Lizzie Stearns Bleecker and Elsie L. Bleecker and The Steamship "Kensington," her engines, &c., The International Navigation Company, claimant, on appeal and cross-appeal, which suit was removed into the said circuit court of appeals by virtue of appeals from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 31st day of October, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States. No. 414, October term, 1899. Lizzie Stearns Bleecker & Elsie L. Bleecker *vs.* The Steamship "Kensington," &c. Writ of certiorari. United States circuit court of appeals, second circuit. Filed Nov. 3, 1899. William Parkin, clerk.

Supreme Court of the United States.

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER
against
THE STEAMSHIP "KENSINGTON," HER ENGINES, &c.; The International Navigation Company, Claimant. } No. 414.

We hereby stipulate that the certified copy of the transcript of record filed in the Supreme Court of the United States, with the petition for a writ of certiorari, may be taken as and shall be the return to the writ of certiorari granted herein by said Supreme Court of the United States to the United States circuit court of appeals for the second circuit on the 30th day of October, 1899.

Dated New York, November 2nd, 1899.

ROGER FOSTER,
Attorney and Proctor for the Bleeckers, Libellants and Appellants.

H. G. WARD,
Proctor for Claimant.

To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause wherein mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and, under the direction of counsel for the appellant, said stipulation is certified as a return to this writ.

New York, November 3, 1899.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals
for the Second Circuit.

[10-cent U. S. internal-revenue stamp, canceled 11, 3, '99. W. P., cl'k.]

[Endorsed:] United States circuit court of appeals, second circuit. Lizzie S. Bleecker *v.* S. S. "Kensington." Return to writ of certiorari.

[Endorsed:] File No., 17,528. Supreme Court U. S., October term, 1899. Term No., 414. Lizzie Stearns Bleecker *et al.*, petitioners, *vs.* The Steamship Kensington, &c. Writ of certiorari and return. Filed Nov. 6, 1899.

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OCT 5

United States Supreme Court.

IN THE MATTER OF THE PETITION

OF

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

FOR A WRIT OF CERTIORARI, ETC.,

TO THE

CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION, AND MOTION.

ROGER FOSTER,
Of Counsel for Petitioners,
35 WALL STREET,
Borough of Manhattan,
New York.

C. G. Burgoyne, Walker and Cooper Sts., N. Y.

To the Supreme Court of the United States of America.

The Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER for a Writ of *Certiorari*, directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,
Libellants and Appellants,

AGAINST

The Steamship "KENSINGTON," her BOILERS, ENGINES, &c.; THE INTERNATIONAL NAVIGATION COMPANY,
Claimants and Appellants.

The said petitioners respectfully show to this Court as follows:

I. Your petitioners were, at the time of the commencement of this suit, citizens and residents of the State of New Jersey, and the claimant was at that time a foreign corporation, duly organized and existing under the laws of the State of New Jersey.

II. On or about the 9th day of December, 1897, the said The International Navigation Company entered into a contract with the libellants and petitioners herein for a valuable consideration to them paid by the libellants, whereby it agreed to and with your petitioners to convey and transport the libellants from the Port of Antwerp, in the Kingdom of Belgium, to the Port of New York, in the United States of America, by the said steamship "Kensington,"

and by said steamship to carry and transport with safety to said port of New York, and there deliver to the libellants, in good order and condition, the personal luggage or baggage of the libellants.

III. On or about the 11th day of December, 1897, the libellants took passage at Antwerp for New York upon said steamship "Kensington," then lying at said Antwerp, bound for said Port of New York, and, in pursuance of the terms of the contract between them and on or about said day last mentioned, delivered to the said The International Navigation Company, on board of said steamship at Antwerp, the wearing apparel and other personal baggage of libellants, to be transported as aforesaid by said steamship to said Port of New York, and there delivered to the libellants in good order and condition.

IV. Early in December, 1897, your petitioners engaged their passage from the claimant herein in Paris, France. At that time they paid part of their passage money, and received in return either a receipt or a ticket, which was not good until the balance of the purchase money was paid in Antwerp. In Antwerp they paid the balance of the purchase money. Neither of them read the ticket, and the day that they went on board the steamer they gave it up to the paymaster (Mrs. Bleecker, p. 15, fols. 57–58; p. 21, fols. 83–84; Miss Bleecker, p. 26, fols. 101, 102).

Your petitioners received in Antwerp a receipt for their baggage, which they also did not read, and which acknowledges the receipt of their baggage, "weight, contents and value unknown, and shipped "by the Red Star Line Steamers, subject to the conditions contained "in the Co.'s ticket and bill of lading. Red Star Line, Antwerp, "December, 1897. Caisse" (p. 56, fol. 222). They were not asked concerning the value of their baggage by any agent of the ship or of the shipowners (p. 24, fol. 96). The ticket so far as material is as follows:

"Paris, on the 2 Decr., 1897. This ticket is good for second-"cabin passage of the persons named in the margin, viz., * * * "by the British Steamship 'Kensington' from Antwerp, on the 11th "of December, 1897, at one o'clock P. M., unless prevented from "unforeseen circumstances." * * * In minute type, much smaller than what preceded: "Notice to passengers. It is a "condition upon which this ticket is granted, and is mutually "agreed, for the consideration aforesaid, that: * * *

"*(c)* The shipowner or agent are not under any circumstances "liable for loss, death, injury or delay to the passenger or his bag- "gage, arising from the act of God, the public enemies, fire, rob- "bers, thieves of whatever kind, whether on board the steamer or "not; perils of the seas, rivers or navigation; accident to or of "machinery, boilers or steam; collisions, strikes, arrest or restraint "of princes, courts of law, rulers or people, or from any act, neglect "or default of the shipowner's servants, whether on board the "steamer or not, or on board any other vessel belonging to the "shipowner, either in matters aforesaid or otherwise howsoever. "Neither the shipowner nor the agent is, under any circumstances, "or for any cause whatever or however arising, liable to any amount "exceeding 250 francs for death, injury or delay of or to any pas- "senger carried under this ticket. The shipowner will use all rea- "sonable means to send the steamer to sea in a seaworthy state, "and well-found, but does not warrant her seaworthiness.

"*(d)* The shipowner or agent shall not, under any circum- "stances, be liable for any loss or delay of or injury to passengers' "baggage carried under this ticket beyond the sum of 250 francs, "at which such baggage is hereby valued, unless a bill of lading "or receipt be given therefor and freight paid in advance on the "excess value at the rate of one per cent., or its equivalent, in "which case the owner shall only be responsible according to the "terms of the shipowner's form of cargo bill of lading in use from "the port of departure, &c. All questions arising hereunder are to "be settled according to Belgian Law."

V. Said steamship sailed from said port of Antwerp with your petitioners and their baggage on board on or about the 11th day of December, 1897, for the port of New York, and where said steamship arrived in safety on or about the 23d day of December, 1897, but owing to the careless, negligent, unusual, insufficient and improper manner in which your petitioners' baggage was stored, and the careless, negligent and insufficient manner in which other merchandise in said steamship was stored, and the want of proper care on the part of the master of said steamship, his officers and crew, and persons employed by him or them, the said personal baggage of your petitioners, which was of the value of four thousand dollars ($4,000), was in great part utterly ruined, whereby your petitioners were severally damaged in the sum of two thousand dollars ($2,000).

VI. On the 9th of February, 1898, the libel herein was filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, and on the same day the above-named steamship was levied upon.

VII. The claimant The International Navigation Company interposed an answer admitting all of the matters alleged in the libel except that it agreed to transport the said luggage with safety and to deliver it in good order and condition except so far as that duty is to be implied from its engagement in the aforesaid ticket, and that the said baggage was damaged by reason of insufficient and improper stowage, and alleged in said answer that the said baggage was injured by reason of the violence of the sea and unusual weather. For a further and independent defense it alleged therein that it was a part of the contract of transportation that all questions arising under the same should be settled according to Belgium law with reference to which the alleged contract was made, and that the said alleged contract contained a provision which was alleged to be valid under the law of Belgium to the effect that the shipowner should not be liable for loss or injury to the passenger or his baggage arising from perils of the sea, rivers or navigation, or from any act, neglect or default of the shipowner's servants. And for a further, separate and partial defense the claimant alleged in said answer that in and by said contract of transportation it was provided that the shipowner should not, under any circumstances, be liable for any loss or injury to passengers' baggage beyond the sum of two hundred and fifty francs, at which such baggage is valued, unless a bill of lading be given therefor, and freight paid in advance on the excess value of the rate of one per cent. or its equivalent, and the claimant avers that no bill of lading or receipt was given or freight paid on any value in excess of the sum of 250 francs by the libellants or by either of them.

VIII. On the 8th day of June, 1898, the above suit came on for trial before the Honorable Addison Brown, District Judge for the Southern District of New York, who, on or about the 1st day of July, 1898, filed his decision to the following effect: That the aforesaid ticket marked "Claimant's Exhibit A" was a contract; that the baggage was damaged by the negligence of the men in charge of the ship; that the clauses of the ticket which purported

to exempt the shipowner from liability did not apply, but that the clause limiting the liability to two hundred and fifty francs was applicable; and on the 29th day of October, 1899, a decree in accordance with said decision was made and entered herein awarding to your petitioners herein the sum of only $96.20, with interest and costs amounting to $51.59, making in all the sum of $151.59, instead of the sum of $4,000 with interest and costs.

Upon said trial your petitioners offered to prove the value of their said baggage, and that the value of the baggage of each of them exceeded in value the sum of $2,000; but the said District Judge excluded the testimony so offered by your petitioners. Said Judge, however, admitted testimony and evidence which showed that the value of the said baggage of each of your petitioners exceeded the sum of 250 francs (pp. 15–17, fols. 59–66).

IX. On or about the 29th day of October, 1898, your petitioners were duly allowed by the said Honorable ADDISON BROWN, District Judge for the Southern District of New York, an appeal from his said decree to the United States Circuit Court of Appeals for the Second Circuit, and it was ordered that a certified transcript of the record and all proceedings in the said case be forthwith transmitted to the said United States Circuit Court of Appeals.

X. A certified transcript of the record and of all proceedings in the case was duly so transmitted to the said United States Circuit Court of Appeals; and on or about the 21st day of April, 1899, the appeal by your petitioners from so much of the aforesaid decree which does not award to each of your petitioners severally damages in the sum of two thousand dollars, and from that part of said decree which limits the recovery of each of your petitioners for damages to the sum of forty-eight and $\frac{10}{100}$ dollars, came on to be be heard, and together with a cross-appeal by the claimants was argued by counsel for all parties before Judges WALLACE, LACOMBE and SHIPMAN. And thereafter, and on the 25th day of May, 1899, said Circuit Court of Appeals rendered and filed an opinion and decision written by Judge LACOMBE, which, among other things, held that the provisions of Section 2 of the Harter Act as to the limiting of liability by bills of lading or shipping documents does not apply to passenger tickets; that a stipulation in a passenger ticket which limits the liability of the carrier for loss of baggage to 250 francs, unless the passenger declares the value of his baggage in excess of

such amount, pays for the transportation of the excess and takes a bill of lading therefor, is not so unreasonable as to be void as against public policy; and that such a stipulation, though in terms limiting the liability of the "shipowner or agent" only, inures to the benefit of the ship itself. Said opinion and decision affirmed said decree of said District Court; and a mandate issued accordingly from said Circuit Court of Appeals to said District Court.

XI. On or about the 6th day of July, 1899, an order was made by the District Court of the United States for the Southern District of New York and entered in the office of the Clerk of said Court on the same day, which order directed that the libellants file with the Clerk of said Court on or before the 12th day of July, 1899, the mandate issued herein by the United States Circuit Court of Appeals for the Second Circuit; which mandate ordered, adjudged and decreed that the decree of said District Court be, and it thereby was, affirmed without interest or costs; and said order further directed that all proceedings upon the decree to be entered upon the said mandate be, and they thereby were, stayed until the 14th day of November, 1899.

XII. In accordance with said order, on the 10th day of July, 1899, the said mandate was duly filed in the office of the Clerk of the United States District Court for the Southern District of New York.

XIII. On or about the 20th day of July, 1899, without prejudice to the rights of your petitioners to apply to this Court for a writ of *certiorari*, an order was duly made by the United States District Court for the Southern District of New York and entered in the office of the Clerk of said Court on the same day, which, among other things, ordered, adjudged and decreed: that the decree of the said Circuit Court of Appeals be, and it thereby was, made the decree of the United States District Court for the Southern District of New York; and that the decree of said District Court entered herein on the 10th day of October, 1898, be, and it thereby was affirmed.

XIV. The questions and propositions of law involved in this case are substantially as follows:

I. Is the following clause, in a ticket purchased in Paris, France,

for the transport of a passenger from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship, reasonable, valid and enforceable in a court of the United States assuming that the Belgian law does not forbid such a contract?

"The shipowner or agent shall not, under any circumstances, be "liable for any loss or delay of or injury to passengers' baggage "carried under this ticket beyond the sum of 250 francs, at which "such baggage is hereby valued, unless a bill of lading or receipt "be given therefor, and freight paid in advance on the excess value "at the rate of one per cent., or its equivalent, in which case the "shipowner shall only be responsible according to the terms of the "shipowner's form of cargo, bill of lading, in use from the port of "departure. All questions arising hereunder are to be settled ac-"cording to the Belgian law."

II. Does the following language, in a ticket purchased in Paris, France, for the transport of a passenger from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship release the steamship from liability in a suit in admiralty *in rem* brought by the passenger, assuming that the Belgium law does not forbid such a contract?

"The shipowner, or agent, shall not, under any circumstances, "be liable for any loss or delay of or injury to passengers' baggage "carried under this ticket beyond the sum of 250 francs, at which "such baggage is hereby valued, unless a bill of lading or receipt "be given therefor, and freight paid in advance on the excess value "at the rate of one per cent., or its equivalent, in which case the "shipowner shall only be responsible according to the terms of the "shipowner's form of cargo, bill of lading, in use from the port of "departure. All questions arising hereunder are to be settled ac-"cording to the Belgium law."

III. Does the Harter Act—viz., Chapter 105 of the laws passed by the fifty-second Congress at its twentieth session, which is published in volume 27 of the statutes at large at page 445—apply to and regulate the liability in admiralty of an ocean steamship which transports from Antwerp, Belgium, to the City, County and State of New York, trunks, which are the property of a passenger upon said steamship when the contract between the passenger and the steamship, its owner and agent is embraced in a document called a ticket, in print and manuscript form, signed by the agents of the owners of the steamships and also in a receipt for said ticket in the following language:

" Total fr.

" Weight, contents and value unknown and shipped by the Red " Star Line steamer, subject to the conditions contained in the Co.'s " ticket and bill of lading.

" RED STAR LINE.
" CAISSE.

" Antwerp, Dec. 97.

All of said questions were duly raised and argued by your petitioners in said District Court and in said Circuit Court of Appeals.

XV. Concerning the clause in said ticket limiting the liability of the carrier, Judge LACOMBE said in his opinion, which is reported in Volume 94 of the Federal Reporter at page 888:

" However unreasonable would be a 'condition' attempting to " relieve the carrier entirely from liability in excess of some named " amount, there seems to be no impropriety in the carrier's requir- " ing the passenger to declare the value of the baggage in excess of " such named amount, to take regular bill of lading therefor, and " to pay for its transportation in proportion to its value, with the " proviso that, if he fails so to do, the carrier shall not be liable. " As to the question whether the sum named (250 francs) is too " small, the supreme court, in the Majestic, *supra*, intimated some " doubt as to the reasonableness of 10 pounds in the case of a first- " cabin passenger's baggage, but rendered no decision thereon. In " view of the circumstance that the condition complained of con- " tained an offer to carry the excess value under a regular bill of " lading, we are not prepared, in the absence of authority, to hold " that 250 francs is an unreasonable valuation for personal baggage " of a second-cabin passenger not thus carried."

XVI. In The Majestic, 166 U. S., 375, 386, this Court, speaking through the Chief-Justice of the United States, said concerning the following clause:

" Neither the shipowner nor the passage broker or agent is in " any case liable for loss or injury to or delay in delivery of lug- " gage or personal effects of the passenger beyond the amount of " 10 pounds unless the value of the same be declared at or before " the issue of this contract ticket, and freight at current rates for " every kind of property," with certain exceptions, " is paid;" that it was a " limitation which we must say *does not* strike us as

"*reasonable*, in view of the 'twenty cubical feet' of baggage for "each which the company had expressly contracted to carry."

In the case of Glovinsky vs. Cunard Steamship Co. (4 N. Y. Miscellaneous Reports, 266) the General Term of the City Court of New York held that the same limitation, to the amount of fifty dollars ($50), upon the liability of a transatlantic steamship company for damage to the baggage of a steerage passenger, when it was contained in a passenger ticket, was unreasonable and void. The sum of one hundred ($100) is the usual limitation for such damage in railroad tickets for short journeys in the United States.

XVII. And your petitioners further aver that the present case is one in which it is proper for this Court to issue a writ of *certiorari*, for the following reasons, among others:

1. Because, in the case of The Majestic, *supra*, this Court intimated that a provision in a passenger ticket exempting the carrier from all liability for loss of baggage beyond ten pounds is unreasonable.

2. Because the Circuit Court of Appeals held that there is no authority as to what is a reasonable limitation of liability for baggage in a passenger ticket.

3. Because the questions of law involved herein have not been passed upon by this Court.

4. Because the public interests and the interests of jurisprudence require the decision of this Court upon the questions of law involved herein.

5. Because, in view of the large number of persons using similar steamship tickets, said questions are of sufficient general, national and material importance and interest as to make it necessary that they should be determined by the Court of last resort.

6. Because there is a conflict in this respect between the law as expounded by said Circuit Court of Appeals and the rule observed in the State Courts held in the same district and circuit.

Wherefore your petitioners pray that this Honorable Court will be pleased to grant a writ of *certiorari* in this case to the Circuit Court of Appeals for the Second Circuit to bring up this case to this Honorable Court for such proceedings therein as to this Honorable Court may seem just.

Ezzine Stern Bleecker
Edwin F. Bleecker
Petitioners' Attorney

STATE OF NEW YORK, SOUTHERN DISTRICT OF NEW YORK, ss.:

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER, being duly sworn, say, and each for herself says: I have read the foregoing petition. The same is true to my own knowledge, information and belief; my knowledge is derived from the record in this case and from what has taken place in my presence and hearing in the court in which this action has been heard.

LIZZIE STEARNS BLEECKER.
ELSIE L. BLEECKER.

Sworn to before me this
20 day of September, 1899.
George E. Hammond

[NOTARIAL SEAL.] Notary Public.

I hereby certify that I have examined the foregoing petition, and in my opinion the petition is well founded, and that the case is one in which the prayer of the petitioners should be granted by this Court.

ROGER FOSTER,
Of Counsel,
For Petitioners.

" every kind of property, with certain exceptions, that it was a " limitation which we must say *does not*

SUPREME COURT

Of the United States of America.

In the Matter of the Petition of Lizzie Stearns Bleecker and Elsie L. Bleecker for a Writ of *Certiorari* directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker,
Libellants, Appellants,

AGAINST

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Compann,
Claimants and Appellants.

Sirs—Please take notice that upon a certified copy of the transcript of the record herein and upon the annexed petition of Lizzie Stearns Bleecker and Elsie L. Bleecker, sworn to the 20 day of September, 1899, I shall move the motion hereto annexed before the Supreme Court of the United States at the Capitol in the City of Washington, District of Columbia, on Monday, the 16 day of October, 1899, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, and that I shall then and there move for such further relief in the premises as may be just.

Dated New York, September 21, 1899.

Yours, &c.,
Roger Foster,
Proctor, Attorney and Counsel for Libellants, Appellants,
35 Wall Street,
New York.

To Messrs. Biddle & Ward, Proctors and Counsel for Claimants, and
To The International Navigation Company.

SUPREME COURT

Of the United States of America.

In the Matter of the Petition of Lizzie Stearns Bleecker and Elsie L. Bleecker for a Writ of *Certiorari* directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker,

Libellants, Appellants,

against

The Steamship "Kensington," her Boilers, Engines, &c., The International Navigation Company,

Claimants and Appellants.

And now come the libellants, appellants above named, by Roger Foster, their counsel, attorney and proctor, and move this Court, upon a certified copy of the transcript of the record herein, and upon the annexed petition sworn to the 20 day of September, 1899, for a writ of *certiorari*, directed to the Circuit Court of Appeals for the Second Circuit and to the District Court of the United States for the Southern District of New York, to bring before this Honorable Court the case of Lizzie Stearns Bleecker and Elsie L. Bleecker, libellants and appellants, against the steamship "Kensington," her boilers, engines, etc., The International Navigation Company, claimants and appellants, recently decided by the Circuit Court of Appeals of the United States for the Second Circuit, and by the District Court of the United States for the Southern District of New York, for such proceedings therein as to this Court may seem just; and for such other and further relief in the premises as may be just.

No. 1466 XXX 15
Brf. of Foster for Petitioner.

Office Supreme Court U. S.
FILED
OCT 23 1899
JAMES H. McKENNEY,
Clerk.

THE

SUPREME COURT OF THE UNITED STATES

Filed Oct. 23, 1899.

In the Matter of the Petition of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER for a Writ of *Certiorari*, directed to the Circuit Court of Appeals for the Second Circuit, to bring before the Supreme Court the case of LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER,

Libellants and Appellants,

AGAINST

THE STEAMSHIP "KENSINGTON," HER BOILERS ENGINES, &C.; THE INTERNATIONAL NAVIGATION COMPANY,

Claimants and Appellants.

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Memorandum in Support of Petition for Certiorari.

The questions which arise in this case, and which, as we submit, are of sufficient importance to require its review by this high tribunal, are as follows:

(1) Is the following clause in a ticket of a passenger upon an ocean steamship from Antwerp, Belgium, to New York City, which allows him 20 cubic feet of baggage, valid and enforceable in a court of the United States, assuming that the Belgian law does not forbid such a contract?

"The shipowner or agent shall not, under any circumstances, be "liable for any loss or delay of or injury to passengers' baggage

" carried under this ticket beyond the sum of 250 francs, at which " such baggage is hereby valued, unless a bill of lading or receipt " be given therefor, and freight paid in advance on the excess value " at the rate of one per cent. or its equivalent, in which case the " shipowner shall only be responsible according to the terms of the " shipowner's form of cargo bill of lading, in use from the port of " departure. All questions arising hereunder are to be settled ac- " cording to the Belgian Law " (Record, pp. 51-53).

(2) Assuming that this clause releases the shipowner and agent, does it release the steamship from liability in a suit *in rem* in admiralty ?

(3) Does the Harter Act (27 St. at L., p. 445), which forbids all covenants and agreements in bills of lading and shipping documents that lessen, weaken or avoid obligations for careful stowage and the liability for want of care in stowage, apply to a long document called a passenger ticket, containing more than a thousand words in print and manuscript, signed by the agents or the owners, and to a receipt accompanying the same, which refers to and describes it as the " Co.'s ticket and bill of lading " ? (Opinion, Record, pp. 61, 63, 64.)

I.

THE GRAVITY AND IMPORTANCE OF THESE QUESTIONS ARE SUFFICIENT TO NECESSITATE THE WRIT.

More than 350,000 passengers arrive yearly at the port of New York from Europe upon ocean steamships. Clauses of this nature are inserted in all their tickets. The proper construction and the validity of such clauses are questions of importance to each immigrant and to each American citizen returning from abroad.

II.

A CERTIORARI IS NEEDED TO COMPEL UNIFORMITY OF DECISION.

The clause in question is similar to a clause in the tickets of the White Star Line, concerning which this Court said, speaking through the Chief-Justice of the United States, in *The Majestic* (166 U. S., 375, 386); that it was a "limitation which we must "say does not strike us as reasonable, in view of the 20 cubi- "cal feet of baggage for each passenger which the company had "expressly contracted to carry." It is probable that the other Circuit Courts of Appeals, in similar cases, will follow the opinion of this Court rather than that of the Circuit Court of Appeals for the Second Circuit in the case at bar. Moreover, the State courts in the City of New York hold that a similar limitation is unreasonable and void.

See *Glovinsky vs. Cunard S. S. Company*, 4 N. Y. Misc., 266.

III.

We submit herewith a copy of our brief in the Circuit Court of Appeals, which contains the arguments in support of our contentions at length.

IV.

THE WRIT SHOULD BE GRANTED.

Respectfully submitted,
ROGER FOSTER,
Of Counsel.

[14336]

No. 142.
Brf. of Foster for Petitioners
Filed Nov. 19, 1900.

Office Supreme Court U.S.
FILED
NOV 19 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

LIZZIE S. BLEECKER and ELSIE L. BLEECKER,
Libellants, Appellants,

AGAINST

The Steamship "KENSINGTON," her boilers, engines, &c.; THE INTERNATIONAL NAVIGATION COMPANY, Claimants; both claiming to be Cross-Appellants.

No. 142.

BRIEF FOR LIBELLANTS, APPELLANTS.

Statement of Facts.

This case was brought up by a writ of *certiorari* issued from this Court to the Circuit Court of Appeals for the Second Circuit, in order to review an affirmance by that Court of a decree in admiralty of the District Court for the Southern District of New York. The libellants had appealed to the Circuit Court of Appeals from so much of a decree of that District Court as limited the damages awarded them to the sum of ninety-six dollars and twenty cents. The claimants also filed a paper which is claimed to be a cross-appeal; but, inasmuch as their alleged appeal was not allowed by any Judge or any Court, such proceedings on the claimant's part was absolutely void (p. 71).

The decree was founded upon a libel against the steamship " Kensington " for a conversion and damage to the baggage of the libellants, of the value of two thousand dollars, upon a voyage from Antwerp to New York in December, 1897.

The libellants are the wife and daughter of an officer of the U. S. Navy, who were returning to their native country after a journey to Europe to join their husband and father, who was stationed there on his ship (Mrs. Bleecker, pp. 10–11, fols. 40–43). They engaged their passage from the claimant, a New Jersey corporation (Answer, p. 5, fol. 18), in Paris, France, early in December (Mrs. Bleecker, p. 11, fol. 43 ; Opinion, p. 58, fol. 231). They then paid part of their passage money, and received for this either a receipt or a ticket, which was not good until the balance of the purchase money was paid in Antwerp. In Antwerp they paid the balance of the purchase money. The best recollection of Mrs. Bleecker is that she got a receipt in Paris, which she gave up when she took the ticket at Antwerp (p. 20, fol. 77). Neither of them read the receipt for their passage money nor their ticket, and the day that they went on board the steamer they gave the ticket to the paymaster (Mrs. Bleecker, p. 15, fols. 57–58 ; p. 21, fols. 83–84 ; Miss Bleecker, p. 26, fols. 101–102)

After they had their ticket they received in Antwerp a receipt for their baggage, which they also did not read *(Ibid.)*, and which acknowledges the receipt of their baggage, " weight, contents and VALUE UN-
" KNOWN, and shipped by the Red Star Line steamer,
" subject to the conditions contained in the Co.'s ticket
" and bill of lading. Red Star Line, Antwerp,
" Dec., '97. Caisse " (p. 56, fol. 222). (The large capitals are ours.)

They were not asked concerning the value of their baggage by any agent of the shipowners (p. 24, fol. 95).

The ticket (pp. 51–56, fols. 201–222), so far as material, is as follows :

" Paris, on the 2nd of Dec., 1897. This ticket " is good for second cabin passage of the persons " named in the margin, to wit, two adults * * * " by the British Steamship Kensington from " Antwerp, on the 11th of December, 1897, at " one o'clock P. M., unless prevented from un- " foreseen circumstances. With 20 cubic feet " of personal baggage for each adult passenger." * * * *In minute type*, much smaller than what preceded : " Notice to passengers. It is " a condition upon which this ticket is granted, " and is mutually agreed, for the consideration " aforesaid, that * * *

" *(c) The shipowner or agent are* not under " any circumstances liable for loss, death, injury " or delay to the passenger or his baggage, " arising from the act of God, the public " enemies, fire, robbers, thieves of whatever " kind, whether on board the steamer or not, " perils of seas, rivers or navigation, accident " to or of machinery, boilers or steam, col- " lisions, strikes, arrest or restraint of princes, " courts of law, rulers, or people, or from any " act, *neglect* or default *of the shipowner's servants*, " whether on board the steamer not, or on " board any other vessel belonging to the ship- " owner, either in matters aforesaid or other- " wise howsoever. *Neither the shipowner nor* " the *agent is*, under any circumstances, or for " any cause whatever or however arising, *liable* " *to an amount exceeding 250* francs for death, " injury or delay of or to any passenger carried " under this ticket. The shipowner will use all " reasonable means to send the steamer to sea " in a seaworthy state, and well-found, but does " not warrant her seaworthiness.

" *(d) The shipowner or agent* shall not, under " any circumstances, be liable for any loss or " delay of or injury to passengers' baggage

"carried under this ticket *beyond the sum* "*of 250 francs at which such baggage* "*is hereby valued*, unless a bill of lading "or receipt be given therefor, and freight "paid in advance on the excess value at the "rate of one per cent., or its equivalent, in "which case the ship owner shall only be re- "sponsible according to the terms of the ship- "owner's form of cargo bill of lading, in use "from the port of departure, &c. All ques- "tions arising hereunder are to be settled ac- "cording to Belgian Law" (the italics are ours).

This ticket was not signed by either of the libellants; nor did it contain any place for the signature of either of them.

Upon the arrival of the steamer in New York, it was discovered that the libellants' trunks, and the other baggage of the passengers, had been broken to pieces by the impact of other freight upon the same deck; and that the contents of the trunks were destroyed by water, dye and dirt (Miss Bleecker, pp. 27–30, fols. 106–112, 113–115, 119; Mr. Cole, pp. 31–35, fols. 122–140). An examination of the hold showed that the freight and baggage had not been properly secured, had been improperly stowed and had not been dunnaged (Mr. Cole, pp. 32–34, fols. 125, 127–130, 134).

The claimants, although they issued a commission to Antwerp in order to examine an alleged expert on Belgian law, did not examine either the stevedores who stowed the baggage or the officer of the ship under whose direction it was put on board. It appeared that that officer was in the hospital at Antwerp, able to receive and permitted visitors, and his deposition could easily have been taken if his testimony would have aided his employers (Roberts, p. 44, fols. 175, 176). The

only evidence offered by the claimants to rebut the presumption of their negligence was that of Roberts, captain of the vessel, who testified that they had head winds and a heavy sea. He further swore that the water which for a space of about six inches covered the deck containing the baggage "was principally caused by steam con-"densation. There was a steam pipe that had "been carried away by the impact from the stuff "when it got adrift; it carried away the steam "pipe, that was the cause of the water—one of the "heating exhaust pipes" (p. 42, fol. 168).

Judge Brown held that the ticket was a contract; that the baggage was damaged by the negligence of the men in charge of the ship; that the clauses of the ticket which purported to exempt the shipowner and agent from liability did not apply; but that the clause limiting the liability to two hundred and fifty (250) francs was applicable; and he consequently awarded only that sum to each of the libellants. He excluded under their exceptions proof of the whole amount of their damages, but admitted enough to show that they were more than the amount awarded (Mrs. Bleeker, pp. 15–17, fols. 59–66).

In obedience to the rule of this Court we reprint here our

Assignment of Errors.

I. The final decree is erroneous in that it does not decree payment to the above-named libellants and appellants of the sum of $4,000 with interest and costs.

II. The final decree is erroneous in that it decrees payment to the said libellants and appellants of the sum of only $96.20 with interest, and costs amounting to $51.50, making in all the sum of $151.59 instead of the sum of $4,000, with interest and costs.

III. The District Judge erroneously held that the ticket marked Claimant's Exhibit A was a contract.

IV. The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of the International Navigation Company was binding upon the said Lizzie Stearns Bleecker and Elsie L. Bleecker.

V. The District Judge erroneously held that the language in said ticket which purported to be a limitation of the liability of claimant to 250 francs was a limitation which it was competent for the defendant company to make.

VI. The District Judge erred in holding that the language in said ticket, Claimant's Exhibit A (marked "D"), which purported to provide that the shipowner or agent should not be liable for injury to possengers' baggage beyond the sum of 250 francs unless extra freight was paid for the same, limited the liability of the steamship Kensington, her boilers, engines, &c., in a court of admiralty for injury to such baggage.

VII. The District Judge erred in holding that the language in said ticket, which purported to provide that the shipowner or agent should not be liable for injury to passengers' baggage beyond the sum of 250 francs unless an extra charge was paid for the same, limited the liability of the said steamship, her boilers, engines, &c., in case such liability was caused by the negligence or misconduct of the officers or crew of the said steamship who stored the said baggage in the said steamship.

VIII. The District Judge erroneously held that the act of Congress, approved on the 13th day of February, 1893, namely: Chapter 105 of the acts of the second session of the Fifty-second Congress, which is

published in 27 United States Stat. at Large at page 445, known as the Harter Act, did not apply to the transportation of the baggage of passengers which was not separately shipped as cargo and for which no freight in addition to the passage money was paid.

IX. In the testimony of the libellants' witness, Lizzie S. Bleecker, the counsel for the libellants asked the following question :

"What were the contents of those trunks, what was their value?" The counsel for the claimant objected to the Court passing upon the question of damages; and the Court sustained the said objection and excluded the said question, to which the libellant duly excepted. The Court erred in sustaining the objection.

X. In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered the passage ticket, Claimant's Exhibit A, in evidence, which was admitted by the Court. The counsel for the libellants objected to the admission of the ticket in evidence as irrelevant and immaterial and because the conditions therein contained are against the public policy. The Court overruled said objection and admitted said ticket in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said ticket in evidence.

XI. In the course of the cross-examination of the libellants' witness, Lizzie S. Bleecker, the counsel for the claimant offered in evidence the baggage receipt, Claimant's Exhibit B. The counsel for the libellants objected to the admission of the baggage receipt as irrelevant, immaterial and incompetent. The Court overruled said objection and admitted said baggage receipt in evidence, to which the libellants duly excepted. The Court erred in overruling said objection.

XII. At the conclusion of the testimony the claimant's counsel offered in evidence the deposition of Maurice de Cock. The counsel for the libellants duly moved to suppress said deposition and objected to the admission of the deposition on the grounds that the witness failed or refused to answer one of the questions put to him on his cross-examination. The Court denied the motion and admitted in evidence said deposition to each of which rulings the counsel for the libellants separately duly excepted. The Court erred in denying said motion and in admitting said deposition in evidence.

XIII. The counsel for the libellants separately and specifically objected to the admission in evidence of the answer to the sixth interrogatory in said deposition, upon the ground that the witness had failed or refused to answer the sixth cross-interrogatory fully, as directed in said cross-interrogatory. The Court overruled said objection and admitted said answer in evidence, to which the libellants duly excepted. The Court erred in overruling said objection and in admitting said answer in evidence.

I.

THE STIPULATIONS MARKED A AND D ARE ATTEMPTS TO RELIEVE THE SHIP OWNER FROM LIABILITY FOR THE NEGLIGENCE OF HIS SERVANTS AGAINST THE PUBLIC POLICY OF THIS COUNTRY AND SHOULD BE DISREGARDED BY OUR COURTS.

(a) The reasons why this Court has held that common carriers cannot exempt themselves from

liability for the negligence of their agents, are, that such contracts are unwarrantable restrictions on commerce; that they tend to encourage negligence by the carrier and thus to endanger the life and property of those on board; and that they are obtained by undue influence, which amounts to fraud, coercion and oppression. Mr. Justice BRADLEY said, speaking for the Court in Railroad Co. vs. Lockwood, 17 Wall., 357, 378-380, 384:

> "Is it true that the public interest is not "affected by induvidual contiacts of the "kind referred to? Is not the whole busi- "ness community affected by holding "such contiacts valid? If held valid, the "advantageous position of the companies "exercising the business of common carriers "is such that it places it in their power to "change the law of common carriers in "effect, by introducing new rules of obliga- "tion.
>
> "The carrier and his customer do not "stand on a footing of equality. * * * "He cannot afford to higgle or stand out "and seek redress in the Courts. His busi- "ness will not admit such a course. He "prefers rather to accept any bill of lading, "or sign any paper the carrier presents; "often, indeed, without knowing what the "one or the other contains. In most cases he "has no alternative but to do this or aban- "don his business. * * * The status and "relative position of the parties render any "such conditions void. Contracts of common "carriers, like those of persons occupying a "fiduciary character, giving them a position in "which they can take undue advantage of the "persons with whom they contract, must rest "upon their fairness and reasonableness. * * *

" The conclusions to which we have come are :
" First, that a common carrier cannot lawfully
" stipulate for exemption from responsibility
" when such exemption is not just and reasona-
" ble in the eye of the law ; secondly, that it is
" not just and reasonable in the eye of the law
" for a common carrier to stipulate for exemp-
" tion from responsibility for the negligence of
" himself or his servants ; thirdly, that these
" rules apply both to carriers of goods and car-
" riers of passengers for hire, *and with special*
" *force to the latter.* "

In Baltimore and Ohio S. W. Ry. Co. vs. Voigt, 176 U. S., 498, 505, 507, this Court said, speaking through Mr. Justice SHIRAS : " This case has been frequently " followed, and it may be regarded as establishing a " settled rule of policy " (Railroad Company vs. Stevens, 95 U.S., 655 ; Liverpool Steam Co. vs. Phenix Co., 129 U. S., 397).

" The principles declared in those cases are salutary, " and we have no disposition to depart from them."

" Upon these principles we think the law of to-day " may be fairly stated as follows : 1. That exemptions " claimed by carriers must be reasonable and just, " otherwise they will be regarded as extorted from the " customers by duress of circumstances, and therefore " not binding. 2. That all attempts of carriers, by " general notices or special contract, to escape from " liability for losses to shippers, or injuries to passen- " gers, resulting from want of care or faithfulness, can- " not be regarded as reasonable and just, but as con- " trary to a sound public policy, and therefore " invalid."

In Oscanyan vs. Winchester Repeating Arms Co., 103 U. S., 261, 277,

Mr. Justice FIELD said :

" Contracts permissible by other countries
" are not enforcible in our Courts if they

" contravene our laws, our morality or our " policy. The contract in suit was made in this " country, and its validity must be determined " by our laws. *But had it been made in Turkey,* " *and were it valid there, it would meet with the* " *same reprobation when brought before our* " *Courts for enforcement.*

" The general rule undoubtedly is that the " validity of a contract is to be decided by the " law of the place where it is made, unless it is " to be performed in another country; but to " this, as to all general rules, there are excep- " tions, and among these Story mentions con- " tracts made in a foreign country to promote " or reward the commission of crime, to corrupt " or evade the due administration of justice, to " cheat public agents or to affect the public " rights, and other contracts which in their " nature are founded in moral turpitude, and " are inconsistent with the good order and solid " interest of society. 'All such contracts,' he " adds, 'even although they might be held valid " ' in a country where they are made, would be " ' held void elsewhere, or at least ought to be, " ' if the dictates of Christian morality, or even " ' of natural justice, are allowed to have their " ' due force and influence in the administra- " ' tion of international jurisprudence' (Story, " Confl. L., Sec. 258)."

In Botany Worsted Mills vs. Knott, 82 Fed. R., 471, 472; s. c., 27 C. C. A., 326, the Circuit Court of Appeals for the Second Circuit held that, even in the case of an English ship, " the provision that the contract " should be governed by the law of the flag (English), " did not relieve the owner of the steamship, such " stipulation being against the public policy of this " country, and, therefore, not enforceable by its " Courts."

Affd. by this Court on October 22d, 1900.

To the same effect is the "Glenmavis," 69 Fed. R., 472, D. C., E. D. Pa.

The "Iowa," D. C., D. Mass., 50 Fed. R., 561.

In the case at bar the Belgic law was not the law of the flag. The flag was that of the United States.

In The Guildhall, 58 Fed. R., 796, 798, the injury occurred upon a voyage from Rotterdam to New York. The bill of lading provided "that the rights of the parties in relation to the carriage and delivery under the bill of lading should be governed by English law." Judge BROWN said:

> "By numerous decisions of the Supreme "Court of the United States stipulations like "these, inserted by a common carrier in a bill "of lading, are, first, void as against public "policy (Liverpool & G. W. Steam Co. vs. "Phenix Ins. Co., 129 U. S., 397, 441; 9 Sup. "Ct., 469); and, secondly, *they are not evidence "of any contract to that effect on the part of the "shipper or consignee, because unreasonable and "not having the necessary element of voluntary "assent* (Railroad Co. vs. Manufacturing Co., "16 Wall., 318; Railroad Co. vs. Lockwood, "17 Wall., 357, 359; Express Co. vs. Caldwell, "21 Wall., 264, 266; Railroad Co. vs. Stevens, "95 U. S., 655, 659; The Energia, 56 Fed., "124). Contract against the public policy of "this country cannot be enforced or upheld in "our Court wheresoever made (Lewisohn vs. "Steamship Co., 56 Fed., 602; Oscanyan vs. "Arms Co., 103 U. S., 261). Such also seems "to be the law of England (Hope vs. Hope, "8 De Gex, M. & G., 731, 743; Rousillon vs. "Rousillon, 14 Ch. Div., 351, 369). In the "latter case Mr. Justice FRY said:
>
> "'It appears to me, however, plain on gen- "'eral principles that this Court will not

" 'enforce a contract against the public policy
" 'of the country wherever it may be made. It
" 'seems to me almost absurd to suppose that
" 'the Courts of this country should enforce a
" 'contract which they consider to be against
" 'public policy simply because it happens to
" 'have been made somewhere else.'

" If this be the law of England, then, under
" the very terms of the clause last above cited
" from this bill of lading, the preceding stipula-
" tions, though valid abroad, should not be en-
" forced here, because contrary to our public
" policy. This principle is recognized and em-
" bodied in the first two sections of the Act of
" Congress, approved February 13, 1893 (27
" Stat., 445, c. 105).

" It is further necessary that any contract of
" exemption shall be proved, as a matter of
" evidence, according to the law of the forum
" *(Hutch. Carr., Sec. 45; Hoadley v. Transpor-*
" *tation Co., 115 Mass., 394.) But since by the*
" *Federal law of this country, as above stated, the*
" *insertion of such stipulations in the bill of lading,*
" *and the receipt of the goods under it, are not*
" *sufficient evidence of any assent to them by the*
" *shipper or consignee, the exemptions alleged fail*
" *to be established as a contract by any sufficient*
" *legal proof* (See The Brantford City, 29 Fed.,
" 373, 393, 394, and cases there cited; The
" Energia, *supra.*)"

In the Brantford City, 29 Fed., 373, 395, the same Judge said:

" A foreign law is never adopted by comity
" where it would be against the public policy
" of the country of the forum, and prejudicial to
" its citizens."

In Monroe vs. Iowa, 50 Fed. R., 561, 563, Judge NELSON said:

> "The libellant is entitled to recover in spite "of the clause providing that all questions "arising under the contract shall be decided "according to British law. This seems to be "an attempt, in an indirect way, to stipulate "that the shipowner shall be exempt from "responsibility for the negligence of his ser- "vants, since the British law is supposed to "uphold such exemptions. The form of the "stipulation is immaterial, and as its purpose "is plainly to impose, upon a contract made "here, a construction which our law rejects as "contrary to public policy, it must be held to "be as much a nullity as the other clauses, "which in express terms limit the liability of "the owner."

In C. B. & Q. R. R. Co. vs. Gardiner, 51 Neb., 70; S. C. 70 N. W. Rep., 508, *held* that a limitation of liability contained in the shipping contract, which was valid in the State where it was made, would not be enforced against the public policy of Nebraska, although the goods were lost in transit through the other State.

In Curtis vs. Del., L. & W. R. Co., 74 N. Y., 116, the plaintiff checked baggage in Pennsylvania for delivery in New York City. It was held that since the contract was to be performed by the delivery in New York, the New York laws governed, and that a stipulation exempting the defendant from liability would not be enforced.

The President, &c., of the Merchants' Bank vs. Spalding, 12 Barbour, 302, 308, per EDWARDS, J.:

> "As a general rule, the Courts of one State, "acting upon the principle of national comity, "will enforce contracts made in another State,

"by the laws of which they are valid, unless
"the rights or interests of the State where the
"contract is sought to be enforced, or of its
"citizens, will be injured."

Dicey on Conflict of Laws, Prof. John B. Moore's Notes, 581:

"Courts will not enforce contracts that
"violate domestic policy."

Andrews vs. Pond, 13 Pet., 65.
Blanchard vs. Russell, 13 Mass., 1.
Bliss vs. Brainard, 41 N. H., 256.
Woodward vs. Roane, 23 Ark., 523.
Castleman vs. Jeffries, 60 Ala., 380.
Davis vs. Bronson, 6 Iowa, 410.
Insurance Co. vs. Edmonson, 5 La. O. S., 295, 300.
Merchants' Bank vs. Spalding, 12 Barb., 302.

It makes no difference that the contract provided that it should be construed by the laws of Belgium; nor would it have made a difference if the negligence had occurred in Belgium.

The reason of the rule that these exemptions are not enforced by the Courts of this country is that they tend to injure commerce by making it less safe, and that they are a fraud upon the rights of American citizens. The authorities are unanimous to the effect that the Courts of no country will enforce a contract which is fraudulent, or which is injurious to its own citizens, or is obnoxious to the public policy of the forum, although such contract may be valid by the laws of the country where it is made. They also agree that, when the performance is invalid by the law of the forum, the contract cannot be executed, although valid where made.

The Trinacria, 42 Fed. R., 863; and
Baetjer vs. Compagnie Generale Transatlantique, 59 Fed. Rep., 789,

both decided by a District Judge, are not inconsistent with the present case.

Those were contracts which affected the importation of ordinary merchandise *from foreign countries into* the United States. The public policy of the United States is not impaired by restrictions upon imports. Our revenue system, which is founded upon a protective tariff, establishes that position beyond a peradventure. Consequently, it may be that our Courts can enforce limitations upon the liability of carriers of foreign goods shipped to this country to compete with domestic articles.

This, on the contrary, is the case of two American citizens against whom unconscionable contracts are sought to be established and enforced; which contracts tend to impair the security of their lives and of their necessary personal effects upon a voyage from Europe to their native country. To uphold the claimants' position would tend to discourage and impede our citizens who may be abroad and desire to come back. It must consequently be against our public policy and void wherever made, and whatever language has been used.

The Court will further observe that the injury here was caused, according to the testimony of the captain of the ship, partly upon the high seas, through the breaking of the water pipe, and also partly in New York, by the spilling of the dye packed upon a lower deck when carried thence to the wharf. This distinguishes the case from those where the injury was solely caused by bad stowage in a foreign port.

Judge BROWN so held (Opinion, p. 63, fol. 252).

II.

The same principles make the attempted limitation of liability for baggage, to the sum of less than fifty dollars, 250 francs, equally unreasonable and ineffectual.

(a) This limitation applies only to the ship owner and not to the ship *(infra*, Point IV., at pp. 25–28 of this Brief*)*.

(b) The rule upon the subject is thus stated by this Court, Mr. Justice HARLAN, in

Railroad Co. vs. Fraloff, 100 U. S., 24, 27:

> Such regulations by common carriers must be "*reasonable in their character and not inconsistent* "*with any statute or their duties to the public*, to "protect themselves against liability, as insurers, "for baggage exceeding a fixed amount in value, "except upon additional compensation;" and they must be "distinctly brought to the knowl- "edge of the passenger."

This language was quoted with approval

in The Majestic, 166 U. S., 375, 385.

This Court then said (at p. 386), concerning the limitation of a recovery to ten pounds sterling that it was "a limitation, which we must say, does not strike us as exactly reasonable in view of the twenty cubical feet of luggage for each, which the company had expressly contracted to carry."

In Eells vs St. Louis, K. & N. W. Ry. Co., 52 Fed. Rep., 903, the Court refused to enforce a bill of lading signed by the shipper, providing that: "The liability "of the Company for valuable live stock shall not ex- "ceed $100 for each animal."

In Kellerman vs. Kansas City R. R. Co., 34 S. W. Rep., 41, the Supreme Court of Missouri *held* a provision unreasonable which limited the liability for live stock to $50 in the case of a bull. So did the Texas Court of Appeals a limitation to $30 in the case of a bull.

St. Louis, etc., St. Railway vs. Robbins, 14 S. W. Rep., 1075.

So did the Supreme Court of Texas a limitation to $100 in the case of a mule.

Southern Tex. Ry. Co. vs. Maddox & Co., 75 Texas, 300

In Ala. Great Southern R. R. vs. Little, 71 Ala., 611, a limitation of $20 a barrel was *held* to be unreasonable.

In Moses vs. Hamburg-American Packet Co., 88 Fed. R., 329, Judge BROWN *held* that the limitation of $100 therein for personal injuries was unreasonable and should not be enforced.

See, also, N. Y. & N. H. R. R. Co. vs. Sayles, 87 Fed. R., 444.
Schwarzchild vs. National S. S. Co., 74 Fed. Rep.. 257, 259.
McFadden vs. Mo. Pac. Ry. Co., 92 Mo., 343.

In Hart vs. Pennsylvania R. R. Co., 112 U. S., 331, the paper construed was a bill of lading for freight not passenger's baggage, and *signed by the plaintiff* (p. 337), which made a reasonable agreed valuation—namely, $200 for each horse or mule. The Supreme Court enforced that as not unreasonable; and one on which the minds of the parties met (p. 338).

No case can be found where the stipulation limiting the liability for loss of the baggage of a passenger upon an ocean voyage to the sum of $50 or less has been enforced.

In Calderon vs. Atlas S. S. Co., 69 Fed., 574, 575 (s. c. 170 U. S., 272):

"The bill contained on its face the follow-
"ing provision: 'And, finally, in accepting this
"'bill of lading, the shipper, owner and con-
"'signee of the goods and the holder of the bill
"'of lading agree to be bound by all of its
"'stipulations, exceptions and conditions
"'as printed on the back thereof, whether
"'written or printed, as fully as if they were
"'all signed by such shipper, owner, consignee
"'or holder.'"

It was expressly held in Glovinsky vs. Cunard S. S. Co., 4 N. Y. Misc., 266, that such a limitation to the amount of $50 upon the liability for the baggage of a steerage passenger was unreasonable and void.

(c) Here there were two passengers, ladies, who were the wife and daughter of a naval officer, and necessarily obliged to dress in accordance with the customs of society in which naval officers mingle. They were each allowed by the company "20 cubic "feet of personal baggage," which the defendant is estopped from disputing to be a reasonable amount. The sum of $50 is hardly sufficient to pay for the dressing case of one of them, or for a single dress, a dressing gown or even for a cloak, leaving out of consideration the other necessaries for traveling, much less 20 cubic feet for each. It is manifestly too unreasonable to be enforced.

In Railroad Co. vs. Fraloff, 100 U. S., 24, quoted *supra*, at page 26 of this brief, this Court held that $10,000 was not an unreasonable value for the personal baggage of a passenger upon a railroad.

The usual limitation in railroad tickets for a night's journey is $100, as is said by Mr. Justice Brown in

Calderon vs. Atlas S. S. Co., 170 U. S., 272, 279.

It is clear that more baggage is needed for a twelve-days' voyage by a passenger on an ocean steamship.

The Tariff Act of July 24, 1897 (Paragraph 697), establishes the law that it is reasonably necessary for an ocean traveler to buy abroad and bring back with him articles worth $100, besides those which he took from home.

It provides (30 Stat. at L., p. 202, par. 697): "Wearing apparel, articles of personal adornment, toilet articles and similar personal effects" purchased abroad can be imported by a passenger free of duty, but "no more than $100 in value of articles purchased abroad by such resident of the United States shall be admitted free of duty upon their return."

Even when assented to, such a limitation is against public policy, within the rule in Railroad Co. vs. Lockwood, 17 Wall., 357 *(infra)*.

(d) The correct construction of the clause does not even relieve the shipowner from liability for negligence. It is as follows:

> "The shipowner or agent shall not, under "any circumstances, be liable for any loss or "delay of, or injury to, passengers' baggage "carried under this ticket beyond the sum of "250 francs, at which said baggage is hereby "valued, unless a bill of lading," etc. (p. 53, fol. 209).

In Rawson vs. Pennsylvania R. Co., 48 N. Y., 212, the ticket contained the following notice on its face:

> "This ticket entitles the holder to not over "80 lbs. baggage free, and not at rate exceeding "in value 100 dollars, unless notice is given, "and an extra amount paid, at double first-class "freight rates."

It was held that the notice of limitation was ineffectual.

General language does not exempt from liability for the negligence of a steamship company, or its agents. See the authorities cited under Point IV., pp. 23-25 of this brief.

It has been held that general language limiting the liability for loss or damage to goods shipped upon an agreed valuation, does not apply to a case where the goods were lost by the negligence of the carrier or his servants, unless such negligence was especially mentioned and excepted in the contract.

Savannah F. & W. Ry. Co. vs. Sloat, 93 Ga., 803.
Georgia R. R. & Banking Co. vs. Keener, 93 Ga., 808.
Orndorff & Co. vs. Adams Express Co., 3 Bush (Ky.), 194.

Jacobson vs. Adams Express Co., 1 Ohio, C. C. R., 381: where the receipt stated that "In no event shall the holder demand beyond the sum of Fifty Dollars, at which the article forwarded is hereby valued."

Weiller vs. Pa. R. R. Co., 134 Pa. St., 310: Where the bill of lading provided that the agreed valuation should "cover loss or damage from any cause whatever."

See

Black vs. Goodrich Trans. Company, 55 Wis., 319.
s. c., 42 Am. Rep., 713.

III.

IF THE CONTRACT BETWEEN THE LIBELLANTS AND THE CLAIMANTS WAS IN WRITING, IT WAS CONTAINED IN TWO PAPERS, THE RECEIPT FOR THE BAGGAGE AND THE

TICKET; AND, SINCE THE RECEIPT EXPRESSLY STATES "VALUE UNKNOWN," THAT NULLIFIES THE PROVISION IN THE TICKET WHICH ATTEMPTS TO PUT A VALUE UPON THE TRUNKS.

The ticket was dated at Paris, but apparently was delivered to Mrs. Bleecker at Antwerp (p. 18, fol. 72). The receipt was delivered at Antwerp (p. 14, fol. 55). It is in the following language: "Weight, contents and value unknown, and shipped by the Red Star Line Steamer, subject to the condition contained in the Co.'s ticket and bill of lading. White Star Line, Antwerp, Dec., '97 Caisse" (p. 56, fol. 222).

This paper was short. written in large, legible type, and easily understood. The words "value unknown," which it contains, are inconsistent with any stipulation in fine print contained in the ticket, which attempts to place any valuation on the baggage. That clause of the ticket provides that "The ship owner or agent shall not * * * be liable for any loss or delay or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which said baggage is hereby valued, *unless a* bill of lading *or receipt be given* therefor, and freight paid in advance on the excess value," &c. The subsequent or contemporaneous delivery of the receipt was a waiver of the requirement for advance payment of freight on an excessive valuation, and is a complete nullification of so much of the ticket as seeks to value the baggage at a specified amount. If that was unknown to the steamship company, it could not agree that the baggage should be valued at a specified sum.

Inasmuch as these papers were drawn by the steamship company, they must be construed in case of doubt in favor of the passenger, *contra proferentem*.

Noonan vs. Bradley, 9 Wall., 394.

See an analogous case:

Tuck vs. Singer Mfg. Co., 67 Iowa, 576.

Mr. James M. Kerr, the well-known legal author, in a recent article in 59 Albany Law Journal, 167, states as a result of the authorities: "The provisions in a "bill of lading limiting the carriers' liability do not "bind the shipper unless he accepted the bill of lading "and understood and assented to its provisions. It "is a question of fact for the jury to determine "whether the shipper had knowledge of and assented "to the limitation in any other case" (Alb. L. J., 167).

Citing Chicago & A. R. R. Co. vs. Davis, 159 Ill., 53.

Field vs. Chicago & R. I. R. R. Co., 71 Ill., 458.

Boscowitz vs. Adams Express Co., 93 Ill., 523.

IV.

EVEN IF THE TICKET AMOUNTED TO A CONTRACT, STILL IT DID NOT EXEMPT THE SHIP FROM LIABILITY FOR THE NEGLIGENT ACTION OF ITS OFFICERS; NOR DID IT LIMIT THE SHIP'S LIABILITY TO THE SUM OF 250 FRANCS, OR $50.

(a) All contracts of this character are to be strictly construed in favor of the passenger and against the carrier which drew the contract, contra proferentem.

Ray on Freight Carriers, Chapter II., pp. 55, 56:

"Although a carrier of freight and pas- "sengers *in the State of New York* may law- "fully stipulate for exemption from liability "for negligence of itself and servants

" when supported by a good consideration, " such as carrying the goods at the lowest " rate made for this class of freight " (citing Jennings v. Grand Trunk R. Co., 52 Hun, 227), " such stipulation is to be strictly con- " strued, and the exemption must be ex- " pressed in terms; and if general words of " release are used, such construction as will " exclude exemption from negligence must " obtain, if the release is not thereby ren- " dered inoperative " (citing Elliott v. New York Cent. & H. R. R. Co., 33 N. Y. S. R., 861; Kenney v. New York Cent. & H. R. R. Co., 125 N. Y., 422, affirming 54 Hun, 143). " A contract releasing a carrier " from all damages to goods from any cause " not the result of collision or cars being " thrown off the track, does not release from " liability for negligence not resulting in " collision or derailment " (citing Phœnix Clay Pot Works v. Pittsburg & L. E. R. Co., 139 Pa., 284). " A bill of lading relieving " a carrier of perishable goods, generally, from " all responsibility for delays, will not relieve it " from liability for the delays occasioned by the " negligence of its own agents and servants " where they are not expressly specified " (citing McKay vs. New York Cent. & H. R. R. Co., 50 Hun, 563). " A common carrier which enters " into a contract exempting it from liability for " the negligence of its servants is not thereby " exempt from liability for its own negligence " (citing Weinborg vs. National S. Co., 25 Jones & S., 586). " An exception in a bill of lading, " in regard to liability for injury to cargo from " any neglect or default of the master, mariners, " or others in the service of the owners, does " not include negligence of the owners them- " selves " (citing The Guildnall, 58 Fed. Rep.,

796). "A shipping contract will not so operate "unless the intent is so clearly expressed that "the shipper could not be misled. It can- "not be inferred from general words in the con- "tract, such as 'damages occasioned by delays "'from any cause, or from change of weather.'"

So, in Fairbank vs. Cincinnati, &c., Ry. Co., 81 Fed. R., page 289, it was *held* that "a clause in a bill of lad- "ing exempting the carrier from liability, resulting "from breaking of machinery" did not include an exemption from a liability caused by the breaking of an axle of a car, but only included such machinery as was connected with the boilers and steam supply.

In Coupland vs. Housatonic R. R. Co., 61 Conn., 531, is was *held* that a stipulation exempting from liability for "breaking" did not include breaking the leg of an animal.

In Rio Grande R. Co. vs. Cross, 5 Texas, Civil App. 454, *held* that a stipulation in the bill of lading given by a railroad and steamship line which limited the liability of the carrier for the property which was to be conveyed "upon said steamship" did not relieve it from liability upon the railroad.

See, also,

N. J. Steam Navigation Co. vs. Merchants' Bank, 6 How., 344.
Hopkins vs. Westcott, 6 Blachford, 64.
Menzell vs. Ry. Co., 1 Dillon, 531.

(b) The clauses referred to only attempted to exempt the "shipowner or agent" who sold the ticket; not the ship. The liability of the ship was consequently not thereby affected.

Such is the natural meaning of the language. To relieve the ship from liability in admiralty requires the insertion by judicial construction into the paper of language which it does not contain. In this case, where the rule is that the paper must be construed strictly against the carrier and the ship, the Court

should not extend the exemption beyond the literal language of the ticket.

In the Harter Act (27 St. at L. 445, Section 2) the language expressly applies to "any vessel * * * her owner, master, agent or manager." Similar language was required here in order to exempt the ship from liability.

It often happens that Courts of admiralty hold that a ship is liable for damages when there is no relief against the owner. This is so in cases of both contract and tort.

In contracts by bottomry bonds the ship is pledged, but the owner incurs no personal responsibility by the execution of the bond by his agent, the master.

The Virgin, 8 Peters, 538, 554.
Stainbank vs. Shepard, 13 C. B., 418.
Stainbank vs. Fenning, 11 C. B., 51.

So as regards liability for torts.

The Druid, 1 W. Robinson, 391, 398, 399, was a suit against the owners of the ship for an intentional collision with another vessel. Dr. Lushington said:

> "I have purposely adopted the expression
> "'suing this ship and her owners' with the
> "view of considering a point which was inci-
> "dentally raised in the argument, whether the
> "liability of the ship and owners is to be
> "measured by the same rules, or whether the
> "ship could be made liable although no per-
> "sonal responsibility should attach upon the
> "owners. Before I proceed further, I will now
> "endeavor very shortly to dispose of the point
> "to which I have just adverted. Now, in some
> "cases it is obvious that a ship may be liable
> "where the owners would not be personally
> "responsible, as, for instance, in cases of lien
> "upon a ship for seamen's wages or bottomry
> "bonds, when the lien has been acquired be-

"fore the existing owners made their pur-
"chase. * * * In all causes of action,
"which may arise from circumstances occurring
"during the ownership of the persons whose
"ship is proceeded against, I apprehend that no
"suit could ever be maintained against a ship
"where the owners were not themselves per-
"sonally liable, *or where their personal liability*
"*had not been given up*," as in bottomry or the Limited Liability Act.

Desty, in his work on Admiralty, quotes a passage in this opinion in such a manner as to imply the direct opposite of what the Judge intended.

See, also, The Bold Buccleugh, 3 W. Robinson, 220.

Suppose that the goods had been securely placed on board the vessel without the knowledge of the owners, and that they had been destroyed by the willful misconduct of the captain in scuttling the ship. The ship would have been liable for his tort, which the law would have treated as the tort of the ship; but the owners might not have been held responsible.

It will be remembered that *there is no proof that, in the law of Belgium, the ancient law of admiralty, making a distinction between the liability of the owner and that of the ship, is not recognized.*

See Liverpool and Great Western Steam Co. vs. Phœnix Insurance Company, 129 U. S.. 397, 445.

In the "Yankee Blade" (Vandewater vs. Mills, 19 How. U. S., 82, 90) Mr. Justice GRIER said:

"Now, it is a doctrine not to be found in any
"treatise on maritime law that every contract
"by the owner or master of a vessel for the
"future employment of it hypothecates the
"vessel for its performance" (citing, amongst

other cases, the City of London, 1 W. Robinson, 89).

In the schooner "Freeman," (Hickox vs. Buckingham, 18 How. U. S., 182) it was *held* that the ship might be liable in a case where the owner was not.

This doctrine is not peculiar to courts of admiralty.

The discharge in bankruptcy of the mortgagor does not discharge the mortgage on the land;

Roberts vs. Wood, 38 Wis., 60;
Brown vs. Hoover, 77 N. C., 40;
Oliphint vs. Eckerly, 36 Ark., 69;

nor a chattel mortgage.

Hamilton vs. Bredeman, 12 Rich. So. C. Law, 464.
Stewart vs. Anderson, 10 Ala., 504.
Roden vs. Jaco, 17 Ala., 344.
Chamberlain vs. Meeder, 16 N. H., 381.

Jones on Mortgages, § 677: "An admission "or recital of indebtedness in a mortgage will "not create a personal liability by implication, "unless it be expressed unequivocally. The "mere recital of the indebtedness is not sufficient to create such liability." Citing

Henry vs. Bell, 5 Vt., 392, 393.
Howell vs. Price, 1 Peere Williams, 291, 293.
Coleman vs. Van Rensselaer, 44 How. Pr., 368.
Smith vs. Rice, 12 Daly, N. Y., 307.

This point was not noticed in Judge BROWN'S opinion.

V.

THERE IS INSUFFICIENT PROOF THAT SUCH STIPULATIONS AS THE TICKETS CONTAINED ARE VALID BY THE LAW OF BELGIUM.

The refusal of the expert to answer the questions on cross-examination, and to quote the decisions to which he referred, renders his testimony of no value (p. 8, fols. 31, 32; p. 45, fols. 177, 178).

Ketland vs. Burnett, 1 Wash., 144; Fed. Cas., No. 7742.

VI.

NEITHER THE TICKET NOR THE RECEIPT WAS A CONTRACT.

(a) It is well-settled law in the United States that unless a ticket is signed by the passenger it is not a contract, but merely a token or voucher; and that exemptions in it, not brought directly to the attention of the passenger, do not bind him. The law is well stated in the leading text books on the subject.

Wheeler on the Modern Law of Carriers (p. 230):

> "No language on a passenger ticket is held to "amount to a contract without proof that the "passenger read it and agreed to it. These "tickets are vouchers that the passenger has "paid his fare and is entitled to the usual ac- "commodation on the carrier's vehicle. They "do not, *per se*, constitute contracts."

Citing

Nevins vs. Bay State Steamboat Co., 4 Bosw., N. Y., 225.
Verner vs. Sweitzer, 32 Penn. St., 208.
Commonwealth vs. Vt. & Mass. R. R., 108 Mass., 7.

Mr. Wheeler's treatise was quoted with approval by this court in the Majestic, 166 U. S., 375, 384.

In Henderson vs. Stevenson, 2 H. L. Sc., 470, Lord HATHERLY said: "A ticket is in reality nothing more "than a receipt for the money which has been paid."

In Mauritz vs. N. Y., L. E. & W. R. R. Co., 23 Fed. R., 765, 769, the Court said:

"The ticket is ordinarily regarded as a mere voucher "for the money paid for it—a token of evidence of the "purchaser's right to be carried, or to have his bag-"gage carried, a certain distance."

Rawson vs. Pennsylvania R. R. Co., 48 N. Y., 212.

In Wiegand *et al.* vs. Central R. Co. of N. J., 75 Fed. Rep., 370–372, affirmed by Circuit Court of Appeals of Third Circuit, 79 Fed. Rep., 991, the ticket said:

"Company's responsibility for baggage limited to "$1.00 per lb., unless special agreement is made."

BUTLER, J.:

"As respects the limitation of liability "stated in the ticket, I think it cannot well be "doubted, under the decisions, that it is in-"effectual, in the absence of evidence that the "plaintiff's attention was *especially* called to "it."

The only exceptions in this country to the doctrine that have been found are a Massachusetts case, where there was a space in the contract for the passenger's signature; and a case in 57 N. Y., decided by the Com-

mission of Appeals, whose decisions have little weight, and which is in conflict with the preponderance of authority.

In The Majestic, 60 Fed. R., 624, 626, the ticket was headed "Cabin Passenger's Contract Ticket" in large type. The ticket was bought by the libellant's agent, "a gentleman of large business experience, who had frequently used similar tickets," and the libel described it as a "contract." The Circuit Court of Appeals held as a fact that the transaction amounted to a contract upon the terms contained in the ticket and its endorsement; but their decree was reversed, and the decree of the District Judge affirmed in 166 U. S., 375, 386.

This Court said, speaking through Mr. Justice FULLER, at page 386: "We quite agree with Lord O'HAGAN in *Henderson vs. Stevenson*, L. R., 2 H. L. Sc., 470:

> "That 'when a company desires to impose
> "'special and most stringent terms upon its
> "'customers, in exoneration of its own liability,
> "'there is nothing unreasonable in requiring
> "'that those terms shall be distinctly declared
> "'and deliberately accepted.'"

This seems to hold that whether or not the ticket expresses the contract is a question of fact in each case. The libellants were ladies with no business experience, who had never traveled on the line before. There was no proof that they had ever used similar tickets. This ticket was not signed by either of them.

It is not described on its face or elsewhere as a contract ticket, as was the case in the Majestic.

The libel as amended did not describe the ticket as a contract.

The only safe and the only reasonable rule in such a case is that the exemptions and limitations in the ticket are not a part of the contract of transportation unless the ticket is signed by the passenger, or the carrier's agent

tells them that it contains such provisions, or it is proved that they have read the paper. Here these three alternatives were all disproved.

In McFadden vs. Missouri Pacific Ry. Co., 92 Mo., 343, 350, 351:

> **" Mr. Frost, who acted in behalf of plaintiff, " in making the shipment and signed the con- " tract, testified that: Nothing was said about " the bill of lading being a special contract; " that he never asked for reduced rates, but " that he shipped the stock and signed the bill " of lading, in this instance, just as he had done " in all others, when acting for other shippers, " and that, so far as he knew, the bill of lading " in this case was the ordinary one signed by " him in all other cases of stock shipment.**
>
> **" The written contract was not, we think, " under these circumstances, conclusive evi- " dence, but merely *prima facie* evidence, that " the given rate was a special and reduced rate. " As between the parties, it was, in this respect, " open to explanation, and impeachable for " error, mistake or false statement."**

(b) The same rule applies to the receipt.

U. S. vs. Pinover, per CHOATE, D. J., 3 Fed. R., 305, 308.

N. Y., N. H. & H. R. R. Co. vs. Sayles, 87 Fed., 444.

A receipt can always be explained.

(c) The size of the type in which the exemption is printed is always an element that may be taken into consideration; and when fine type, or type smaller than the body of the receipt or ticket, is used, it has been held that the stipulations thus printed are inoperative.

See

Brown vs. Eastern R. Co., 11 Cush., 97.
Blossom vs. Dodd, 43 N. Y., 264.

Madan vs. Sherard, 73 N. Y., 329.
McMillan vs. Michigan S. & N. I. R. Co., 16 Mich., 79.
Verner vs. Sweitzer, 32 Penn. St., 208.
Blumenthal vs. Brainerd, 38 Vt., 402.
Perry vs. Thompson, 98 Mass., 249.
Simons vs. Great Western R. R. Co., 2 C. B. N. S., 619.
Strohn vs. Detroit & M. R. Co., 21 Wisc., 562.
Belger vs. Dinsmore, 51 N. Y., 166.
The Wisconsin vs. Young, 3 G. Greene, Iowa, 268.
Adams Exp. Co. vs. Guthrie, 9 Bush., Ky., 78.

In Richardson, Spence & Co. vs. Rowntree, House of Lords, 1894, A. C., 217; upon a passage from Philadelphia to Liverpool, the passenger received a folded ticket with a clause in small print, limiting the liability to $100, *held*, not sufficient notice to constitute a binding contract which relieved the carrier.

It will be remembered that the original allegation in the pleading, describing the ticket as a contract, was copied by mistake from the pleading in the "Majestic," and was subsequently stricken out in an amendment granted by the Court (p. 73, fol. 301).

The original pleading as unamended was not put in evidence, and cannot consequently prejudice the libellants. Had it been, they would have explained the inadvertence through which it was made.

See Abbott's Trial Brief before a Jury, p. 69.

VII.

The Harter Act, 27 Stat. L., 445, invalidates all the stipulations upon which the claimant relies.

Section 2 of that act provides :

> " It shall not be lawful for any vessel trans-
> " porting merchandise or property from or be-
> " tween ports of the United States of America
> " and foreign ports, her owner, master, agent or
> " manager, to insert in any bill of lading or
> " shipping document any covenant or agreement
> " whereby the obligations of the owner or own-
> " ers of said vessel to exercise due diligence to
> " properly equip, man, provision and outfit said
> " vessel, and to make said vessel seaworthy and
> " capable of performing her intended voyage,
> " or whereby the obligations of the master,
> " officers, agents or servants to carefully handle
> " and stow her cargo, and to care for and prop-
> " erly deliver the same, shall in any wise be
> " *lessened, weakened* or avoided."

That act applies to a ship sailing between New York and Antwerp, whether it sails from New York to Antwerp, or from Antwerp to New York.

Knott vs. The Botany Worsted Mills, October 22, 1900; where the voyage was from Buenos Ayres to New York upon a British vessel, not an American ship, as here. There the Court said, speaking through Mr. Justice GRAY: " This express provision of the Act of " Congress overrides and nullifies the stipulations of " the bill of lading that the carrier shall be exempt " from liability for such negligence, and that the con- " tract shall be governed by the law of the ship's flag."

In Wuppermann vs. Carib Prince, 170 U. S., 655, it was applied to a voyage from Trinidad to New York.

The damage to the property in the present case was caused both by bad stowage and by failure to properly equip the vessel so as to prevent the breaking of a steam pipe (pp. 31–35, 42).

The decision in The Rosedale, 88 Fed. R., 324, 328, does not apply. There the ticket was an ordinary card for a short voyage of a few hours on the Sound. Here the ticket was a large paper containing numerous stipulations in fine print. Moreover, the libellants here also received a receipt for their baggage.

The receipt described the ticket as a " ticket and " bill of lading " (p. 56, fol. 222). This estops the claimants from now contending that the ticket is not a bill of lading.

If the receipt and ticket amount to a contract, they are bills of lading or shipping documents. If they do not constitute a contract, the stipulations recited in them are not binding upon the libellants.

Planters' Fertilizer Mfg. Co., 101 Fed. R., 1001, 1003 (C. C. A., 5th Circuit), per PARDEE, J. :

> " A bill of lading is of a two-fold character. " It is a receipt for goods and a contract to " carry."

In Foster vs. Colby, 28 L. J., Ex., 81, 85,

Lord BRAMWELL defined a bill of lading as the written evidence of a contract between shipper and shipowner.

Porter on Bills of Lading, § 1 :

> " A bill of lading is a written acknowledg- " ment by a carrier of the receipt of certain " goods, and an agreement for a consideration " to transport and to deliver the same at a " specified place to a person therein named " or to his order."

Ibid., § 5: "The bill must be signed by or "on behalf of the party undertaking the "carriage, but need not be, and generally is "not, signed by the party shipping."

Ibid., § 54, speaking of clauses in a bill of lading which affect the carrier's liability: "The most common clause is 'contents unknown.'"

The "May Flower," 3 Ware, 300, 302:

"It is of the essence of a bill of lading, "that it contains a receipt for the goods with a "promise to carry and deliver them, for this the "master promises, and it necessarily contains "nothing more."

Cope vs. Cordova, 1 Raule (Pa.), 202, 209:

"The substance of a bill of lading is a formal "acknowledgment of a receipt of goods, and an "engagement to deliver them to the assignee or "his assigns."

Benedict on Admiralty, § 286:

"The written acknowledgment of the recep- "tion on board of a particular vessel of a par- "ticular quantity or parcel of goods to be car- "ried to a particular place is a bill of lading. "There is a usual, but not a necessary, form of "a bill of lading, and any paper containing the "substantial elements of the usual bill of lading "is a bill of lading. Shipments are often made "without any bill of lading or written evidence "of the transaction or of the liabilities of parties, "and the law and the jurisdiction are the same as "if the whole were in writing. It is the fact "that the goods are shipped and not the written "acknowledgment of it—the obligation to carry "them safely, and not the written contract—

" that creates the liability and fixes the juris-
" diction of the court."

Supposing that the ship owner refused to make any written contract at all ; but insisted upon limiting his liability by an oral contract which contained provisions forbidden by the Harter Act. Would this Court not hold that they were within the equity on that statute and consequently within its prohibitions ? Most certainly.

In the case at bar the receipt was a written acknowledgment that the goods had been received from the shippers to be transported and by reference to the ticket which it described as a " bill or lading," it incorporated the terms set forth in the ticket within itself, except so far as the statements in the receipt were inconsistent; and it consequently expressed the terms on which the goods were received. The place of destination was also described.

If the receipt and ticket were not a bill of lading they certainly constituted a " shipping document."

The Encyclopedia of Law, Vol. V., p. 853, defines a document as " A written or printed paper. A paper containing information relating to any matter."

The receipt and ticket were in print and writing. Each of them contained information concerning the voyage.

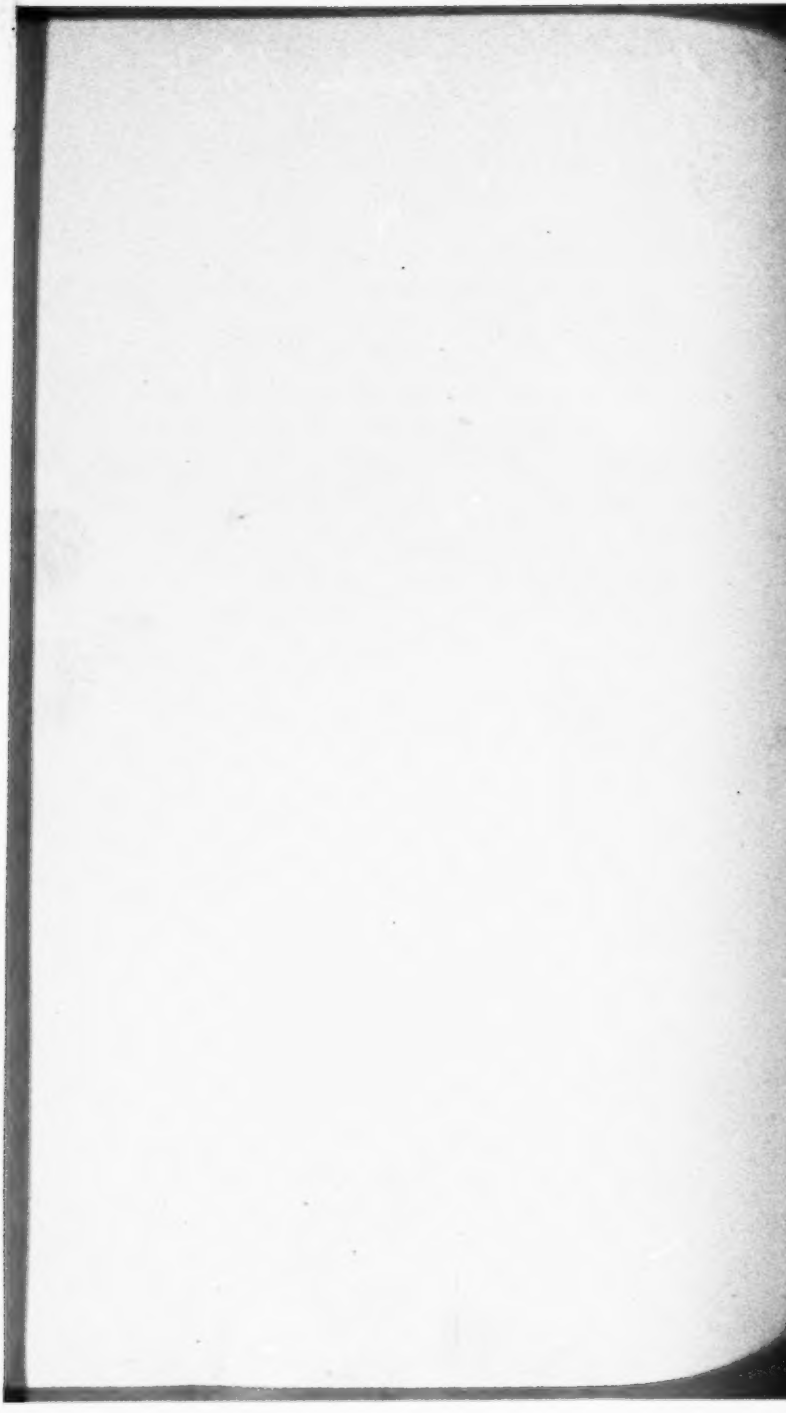
The addition by Congress of the words " or shipping document " to " bill of lading " shows its intention to make the statute apply to every case of the transportation of goods upon an ocean voyage where a receipt of any sort is given.

There is nothing in the act nor in the proceedings in Congress upon its passage to show that it was intended to exempt travellers from its benefits. It might as well be claimed that their baggage is exempt from duties.

VIII.

THE DECREE SHOULD BE REVERSED AND THE DISTRICT JUDGE ORDERED TO TAKE THE LIBELLANTS' TESTIMONY AS TO THE VALUE OF THEIR BAGGAGE, AND THEN TO ENTER A DECREE FOR THE FULL VALUE OF THE SAME AND COSTS, INCLUDING THE COSTS IN THIS COURT AND IN THE CIRCUIT COURT OF APPEALS.

ROGER FOSTER,
Of Counsel for Libellants, Appellants.



No. 15

Supreme Court of the United States,

OCTOBER TERM, 1899.

Brief of Mr. Ward for Respondent

Filed Oct. 18, 1899

No. 414

Office Supreme Court U. S.
FILED
OCT 18 1899
JAMES H. McKENNEY,
Clerk.

IN THE MATTER

OF

THE PETITION OF LIZZIE STEARNS BLEECKER AND ANOTHER, FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

MEMORANDUM IN OPPOSITION TO PETITION.

HENRY GALBRAITH WARD,
Of Counsel for INTERNATIONAL NAVIGATION COMPANY,
160 BROADWAY,
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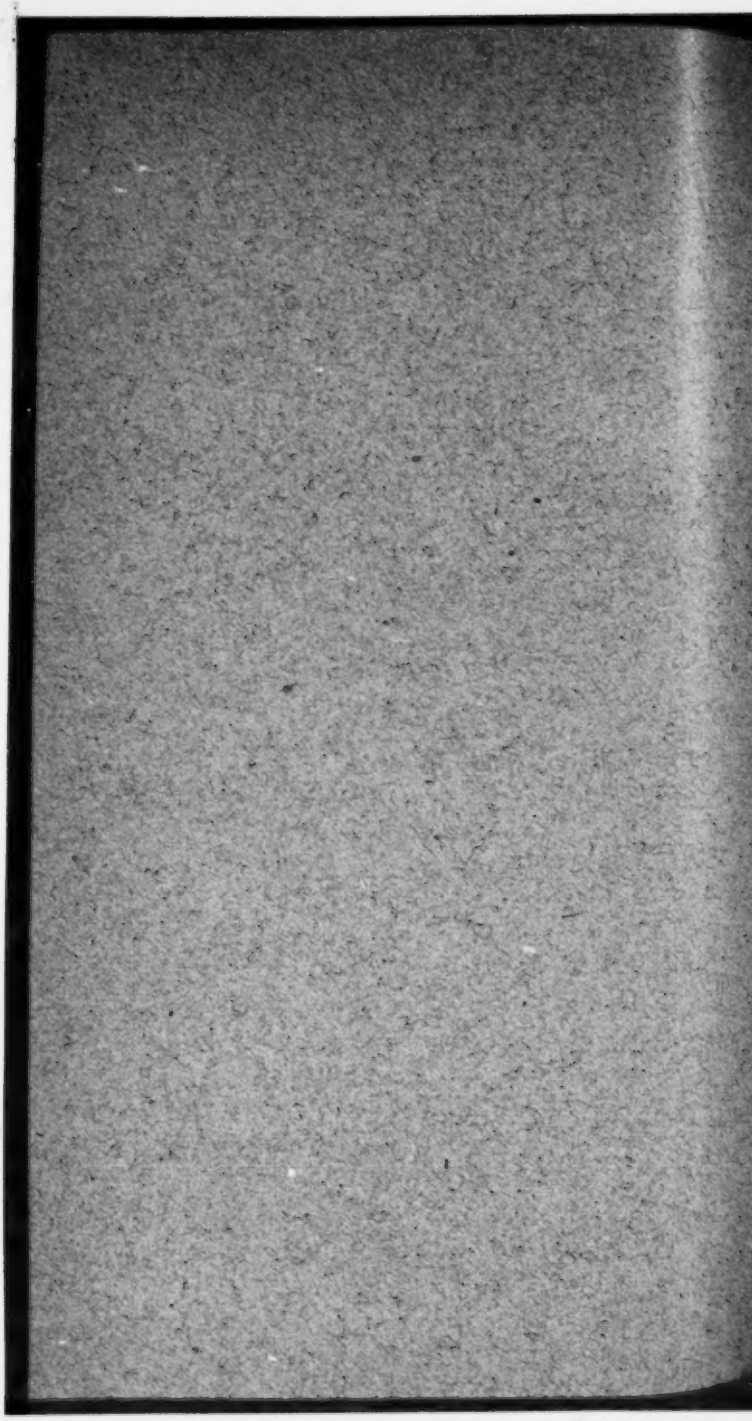

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1899. No. 414.

IN THE MATTER

of

The Petition of LIZZIE STEARNS BLEECKER and another, for a Writ of Certiorari to the Circuit Court of Appeals for the Second Circuit.

MEMORANDUM IN OPPOSITION TO THE PETITION.

To the Honorable the Supreme Court of the United States:

The proctors of the International Navigation Company, claimant of the steamship "Kensington," beg leave to file the following memorandum in reply to the petition of Lizzie Stearns Bleecker and Elsie L. Bleecker for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit.

The petitioners, in subdivision III. of article XIV., on page 7 of the petition, misdescribe the document there mentioned as a receipt for the ticket, and print but part of it.

The document is, in point of fact, a receipt for the baggage, and for 24 francs in repayment of the railroad

freight to Antwerp which the Company had advanced. It is as follows:

RECEIVED for R. R. carriage and charges on baggage or
EMPFAGEN fur Bahnfracht und Spesen oder auf Gepack
RECU pour port et frais sur bagages ou

L/V		fr	"
"	21358	"	24"
"		"	"
"		"	"
R. R. Baggage check		"	"
Storage Receipt		"	"
: Ocean freight			
For: Ocean freight on excess of Baggage		"	"
:			

Clts Ex. B Total fr.

Weight, contents and value unknown and shipped by the Red Star Line steamer, subject to the conditions contained in the Co's ticket and bill of lading.

RED STAR LINE,
Antwerp
Dec. 97
Caisse.

The reference to the company's bill of lading was in order to cover the case of the passengers stating the value of their baggage to be over 250 francs and paying one per cent. as freight on the value in excess of that amount.

We proceed to consider the questions of law proposed by the petitioners in Article XIV. of the petition, the first being as follows:

"I. Is the following clause, in a ticket purchased in Paris, France, for the transport of a passenger

from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship, reasonable, valid and enforceable in a court of the United States, assuming that the Belgian law does not forbid such a contract?

> "The shipowner or agent shall not, under any circumstances, be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor, and freight paid in advance on the excess value at the rate of one per cent., or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure. All questions arising hereunder are to be settled according to the Belgian law."

We point out that the last sentence is to be found at the very end of the ticket, and is, therefore, here printed out of place; and it is printed omitting the following words, which are a part of it:

> "With reference to which this contract is made."

The circumstance that the contract of transportation was entered into at Paris is not material. Only a part of the passage money was paid there, and the ticket was not to become operative until the balance was paid at Antwerp. The performance of the contract was to begin at Antwerp and to end at New York. Therefore, the law of France at least would not be applicable in any respect.

It will be noticed that both the District Court and the Circuit Court of Appeals have found that this clause was printed on the face of the ticket over the signature of the agent in type, which, though somewhat smaller than the preceding type, was perfectly clear and legible.

This Court, in the case of the "*Majestic*," 166 U. S., p. 375, had under consideration a ticket of the White Star

Line, upon the front of which there was an agreement of *transportation over the signature of the agent*, and on the back of which there was a notice to passengers in seven different paragraphs, one of which was passed upon by the Court. This Court, in a most unmistakable way, held that what was printed on the face of the ticket over the signature of the agent was a contract; whereas, what was printed on the back of the ticket was a mere notice, and therefore not a part of the contract. The opinion begins with these words:

> "By *the contract* in this case the Steamship Company agreed to land libellants with their luggage at the port of New York, and none of the alleged exceptions or conditions were referred to therein. They were notices and nothing more, and it cannot be held as matter of law that whether they were regulations for the conduct of business or limitations upon common law obligations they constituted any part of *the contract*."

The italics are ours.

Accordingly the provision relied upon by the claimant in this case should be taken to be a part of the contract, and therefore the question of its reasonableness, provided only that it is not against public policy, does not arise at all. It is sufficient that the parties have agreed to it.

That it is not against public policy has been decided by this Court after most careful consideration in the case of *Hart* vs. *Pennsylvania Railroad Company*, 112 U. S., 331, where it was held that though a common carrier cannot exempt himself from liability for negligence, yet he may fix a value upon the property carried and limit the amount of his liability to that value, especially if the rate of freight is made proportionate to the value. It resulted in that case that the shipper's offer to show that the extent of his loss was $25,000, whereas under the contract

he received but $1,200, was excluded. This is precisely the arrangement that is made in the clause now before the Court; the baggage is carried free provided it is valued at 250 francs. But if the passenger wishes it to be carried at its real value, then he must pay freight at the rate of one per cent. on the excess value over 250 francs.

It must be admitted that the case of *Richardson, Spence & Co.* vs. *Rowntree*, 1894, Appeal Cases, 217, is not consistent with what we have said nor with the *ratio decidendi* in the case of the "*Majestic.*" It may fairly be described as at least an insufficiently considered case. The Law Lords decided it upon the strength of two prior decisions, one of

Henderson vs. *Stevenson*, H. L. 2 App. Cases, Sc., 470;

Parker vs. *Southeastern* R.R. Co., L. R. 1 C. P. D., 618, 2 C. P. D., 416.

The stipulations which were relied upon by the defendants in those cases were printed upon the back, in the one case upon a steamer ticket which had on it merely "Dublin to Whitehaven," and in the other on a receipt for luggage which was deposited in the luggage office of a railroad company. There was absolutely no ground for saying that what was printed on the face of either of these instruments was the contract, or that what was printed on the back was a part of what was printed on the face. The House of Lords seems to hold that no instrument drawn by one man and given to another can be a contract unless its provisions have been called to the attention of the party who did not prepare it. Of course, we know this is not so in the case of bills of lading and policies of insurance. Whether such an instrument is or is not a contract depends chiefly upon its terms. It is true that most railroad tickets and some steamship tickets, as in the Henderson

case, are mere vouchers. A ticket for ocean transportation, however, is a much more important document; it is a transaction into which people enter with care, and no Transatlantic steamship ticket, as far as we know, is drawn as a voucher. In the ticket now under consideration, above the signature of the agent are contained all the provisions applicable to the transportation, and in its very last clause it is described as a contract. This was the view taken of the ticket of the Cunard Steamship Company in the case of *Fonseca* vs. *The Steamship Co.*, 153 Mass., 553, and by the Court of Appeals of the State of New York in a ticket which was the predecessor of the very one before this Court.

Steers vs. *The Liverpool & N. Y. SS. Co.*, 57 N. Y., 1.

Unless some fraud or deception or concealment is practiced the party accepting such a document is bound by its terms.

It will be observed that the *Richardson* case involved a claim for personal injuries as to which the amount of the company's liability was restricted to $100. And the ticket contained no provision, as in the clause now under consideration, whereby upon payment of a greater sum the company's liability could be proportionately increased.

The condition of the law on this point in England is certainly in an unsatisfactory state. *Sir Frederick Pollock*, in the 6th edition (August, 1894) of his work on the Law of Contracts, speaking of the law of England, and citing among other cases *Richardson* vs. *Rowntree*, says:

> "The result, as it stands at present, appears to be that it is a question of fact whether the notice given in each case was reasonably sufficient to inform the party receiving it at the time of making the contract that the party giving it intended to contract only on special terms. A person who, knowing this, enters

into the contract, is then deemed to assent to the special terms; but this again is probably subject to an implied condition that the terms are relevant and reasonable. It cannot be said that the subject is yet free from doubt."

In the *Fonseca* case the Court said, *inter alia:*

"The principal question before us is whether the plaintiff, by reason of his acceptance and use of his ticket, shall be conclusively held to have assented to its terms. It has often been decided that one who accepts a contract and proceeds to avail himself of its provisions, is bound by the stipulations and conditions expressed in it, whether he reads them or not. (Rice *vs.* Dwight Mfg. Co., 2 Cush., 80; Grace *vs.* Adams, 100 Mass., 505; Hoadley *vs.* North Trans. Co., 115 Mass., 304; Monitor Ins. Co. *vs.* Buffum, 115 Mass., 343; Germania Ins. Co. *vs.* Memphis R.R., 72 N. Y., 90.) This rule is as applicable to contracts for the carriage of persons or property as to contracts of any other kind. (Grace *vs.* Adams, 100 Mass., 505; B. & M. R.R. *vs.* Chipman, 146 Mass., 107; Parker *vs.* S. E. R.R., 2 C. P. D., 416, 428; Harris *vs.* Great West. R.R., 1 Q. B. D., 515; York Co. *vs.* Central R.R., 3 Wall., 107; Hill *vs.* Syracuse R.R., 73 N. Y., 351.) The cases in which it is held that one who receives a ticket that appears to be a mere check showing the points between which he is entitled to be carried, and that contains conditions on its back which he does not read, is not bound by such conditions, do not fall within this rule. (Brown *vs.* E. R.R., 11 Cush., 97; Malone *vs.* Boston R.R., 12 Gray, 388; Henderson *vs.* Stevenson, L. R. 2, H. L. Sc., 470; Quimby *vs.* Vanderbilt, 17 N. Y., 306; R.R. *vs.* Stevens, 95 U. S., 655.) Such a ticket does not purport to be a contract which expressly states the rights of the parties, but only a check to indicate the route over which the passenger is to be carried, and he is not expected to examine it to see whether it contains any unusual stipulations. The precise question in the present case is whether the 'contract

ticket' was of such a kind that the passenger taking it should have understood that it was a contract containing stipulations which would determine the rights of the parties in reference to his carriage. If so he would be expected to read it, and if he failed to do so he is bound by its stipulations. It covered with print and writing the greater part of two large quarto pages and bore the signature of the defendant company affixed by its agent, with a blank space for the signature of the passenger. The fact that it was not signed by the plaintiff was immaterial. (*Quimby* vs. *Boston & Maine R.R.*, 150 Mass., 365, and cases there cited. It contained elaborate provisions in regard to the rights of the passenger on the voyage, and even went into such detail as to give the bill of fare for each meal in the day for every day in the week. No one who could read could glance on it without seeing that it undertook expressly to prescribe the particulars which would govern the conduct of the parties until the passenger reached the port of destination. In that particular it was entirely unlike the pasteboard tickets which are commonly sold to passengers on railroads. In reference to this question, the same rules of law apply to a contract to carry a passenger as to a contract for the transportation of goods. There is no reason why the consignor who is bound by the provisions of a bill of lading which he accepts without reading should not be equally bound by the terms of a contract in similar form to receive and transport him as a passenger."

And the Court of Appeals of New York in the *Steers* case said:

"In the case of *Belger* vs. *Dinsmore* (51 N. Y., 166), it was decided that in the absence of fraud, concealment or improper practice, the legal presumption is that stipulations limiting the common-law liability of common carriers, contained in a receipt given by them for freight, were known and assented to by the party receiving it. In that case the decision in *Blos-*

som vs. *Dodd* (43 N. Y., 264) was examined and shown to be entirely consistent with the conclusion arrived at. I do not perceive any distinction growing out of the fact, that in the case before us the subject was the transportation of a passenger and her baggage, which can render the decision inapplicable. The plaintiff, by her agent, was an applicant for a passage to Europe by the defendant's ship, the voyage to be commenced at a future day, and received on payment of the price a written engagement from the defendant expressing its undertaking. A printed *fac-simile* of this paper is before us, and although part of it is in smaller type than the rest, no part of it is in such type as to suggest to the mind the idea of concealment as the possible motive for its being thus printed. It is all printed on one side of the paper, and all the printed matter precedes the signature of the agent of the defendant. That the plaintiff herself never read the paper is of no moment. The arrangement was made by her agent, who must be presumed to have acquainted himself with the terms of the engagement which the defendant assented to. Looking to the course of business, the Court may take notice that an engagement for a voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an express company's receipt for baggage or for freight. There is, therefore, no room in such a case for the suggestion that the party is surprised into a contract, when he supposes himself only to be taking a token indicative of his right. The paper in evidence ought, therefore, to be regarded as having received the mutual assent of the parties, and as being, as its language purports, their contract touching the voyage in question."

This ticket belongs to a class of unilateral contracts of which there are many in use, viz.: Bills of lading, blanks for telegraph messages and policies of insurance. We can conceive no reason why the holder of either of these documents is bound without reading or knowing its provisions when he took it; and yet the holder of a ticket for

transportation across the ocean is not. In truth the transaction of business would be greatly embarrassed by such a ruling, because the carrier, though offering a contract in its nature reasonable, would find that his rights depended upon whether the purchaser of the contract was literate or illiterate, or was a foreigner who could not understand the language; and would be greatly exposed to unconscientious claims, because he never could prove that the holder had read, or if he had read had understood, the provisions of the contract. Must the carrier print for the foreigner in his own language or translate the English to him, read to the uneducated, and, when all is done, be at the risk of being misunderstood?

> "II.—Does the following language, in a ticket purchased in Paris, France, for the transport of a passenger from Antwerp, Belgium, to the City, County and State of New York, upon an ocean steamship, release the steamship from liability in a suit in admiralty *in rem* brought by the passenger, assuming that the Belgium law does not forbid such a contract?
>
> "The shipowner, or agent, shall not, under any circumstances, be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor, and freight paid in advance on the excess value at the rate of one per cent., or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure. All questions arising hereunder are to be settled according to the Belgium law."

The same criticism is to be made upon the last sentence as was made in the foregoing article.

No one who reads this clause can be in any doubt that it was intended to apply to the shipowner and his property

as well. The agent is separately mentioned because, having signed the contract, he might be personally liable. It is not to be inferred from this that it was intended to leave the shipowner's property liable. No doubt, contracts can be made whereby a man is relieved from liability, and yet all his property, or a particular piece of his property, subjected to it; but precise and unmistakable language would be required to produce so singular a result. To read the clause of the contract in this way would not be to construe it, but to nullify it. An exemption of the shipowner would be perfectly valueless if his vessel is subjected for the same claim to a maritime lien. A lien arises in the case of a maritime contract only as an incident of personal liability of the contractor, and if his personal liability be released, it stands to reason that the lien is. Could it, for instance, be contended that if these passengers had executed a release to the Steamship Company, without mentioning the steamship, for a valuable consideration, that they then might turn around and prosecute the same claim against the vessel? When the parties have agreed that for any particular claim the contractor shall not be liable, obviously his property cannot be liable for it. The whole contains the parts.

There is no conflict between the law as laid down by the Circuit Court of Appeals and the law as laid down in the State Courts on this subject. On the contrary, the District Court, whose opinion was affirmed, followed the decision of the Court of Appeals in the case of *Steers* vs. *the Liverpool, N. Y. & P. Steamship Co.*, 57 N. Y., 1, which was a decision on substantially the same ticket as is now before the Court.

"III. Does the Harter Act—viz., Chapter 105 of the laws passed by the fifty-second Congress at its twentieth session, which is published in volume 27 of the statutes at large at page 445—apply to and regulate

the liability in admiralty of an ocean steamship which transports from Antwerp, Belgium, to the City, County and State of New York, trunks, which are the property of a passenger upon said steamship when the contract between the passenger and the steamship, its owner and agent, is embraced in a document called a ticket, in print and manuscript form, signed by the agents of the owners of the steamships and also in a receipt for said ticket in the following language:

"Total fr.

"Weight, contents and value unknown and shipped by the Red Star Line steamer, subject to the conditions contained in the Co's ticket and bill of lading.

"Red Star Line.
"Caisse.

"Antwerp, Dec. 97."

Judge Brown, of the District Court of the United State for the Southern District of New York, held in the "*Rosedale and Oregon*," 88 Fed. Rep., 324, lately affirmed in the Circuit Court of Appeals, 92 Fed. Rep., 1021, that this Act did not cover contracts for the carriage of passengers and their baggage. The statute both in Sections 1, 2 and 4 speaks merely of provisions in "bills of lading or shipping documents" for the transportation of "merchandise and property."

The ticket in this case certainly does not fall within the words "bill of lading or shipping document," used in Sections 1, 2 and 4 of the Harter Act. These are expressions perfectly well understood in commerce, and apply to bills of lading covering trade shipments, which are almost invariably insured. That Congress meant by the words "bill of lading or shipping document" but one thing, namely, bill of lading, appears from the language of Section 5, which provides a penalty for refusing to issue on demand "the bill of lading herein provided for,"

and does not mention the words "shipping document" at all.

On the other hand, for personal baggage accompanying the passenger no bill of lading or shipping document is, so far as we know, ever given. If the libellants had intended their personal baggage to fall within the provisions of the Harter Act, they could have accomplished it, as provided in the ticket itself, by declaring the value of the baggage over 250 francs, paying freight on the excess and getting a bill of lading. Not having done so, it remains baggage, and it does not lie in their mouths now to say that it is property or merchandise within the meaning of the Harter Act.

It is respectfully submitted that the petition herein should be denied.

ROBINSON, BIDDLE & WARD,
Proctors for the
International Navigation Company.

HENRY GALBRAITH WARD,
Advocate.

No. 142.

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OCTOBER TERM 1900.

Brief of Ward for Respondent.

Number 142.

Filed Nov. 30, 1900.

LIZZIE STEARNS BLEECKER AND
ELSIE L. BLEECKER,

Libellants and Appellants,

vs.

THE STEAMSHIP "KENSINGTON," HER ENGINES, ETC.

INTERNATIONAL NAVIGATION COMPANY,

Claimant and Appellee.

Brief on behalf of the International Navigation Company, Claimant and Appellee.

HENRY GALBRAITH WARD,
Of Counsel for International Navigation Company,
160 BROADWAY, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, ~~1899.~~ 1900

No. ~~414.~~ 142

LIZZIE STEARNS BLEECKER and ELSIE L. BLEECKER, Libellants and Appellants,

vs.

THE STEAMSHIP "KENSINGTON," her Engines, etc., INTERNATIONAL NAVIGATION COMPANY, Claimant and Appellee.

BRIEF ON BEHALF OF THE INTERNATIONAL NAVIGATION COMPANY, Claimant and Appellee.

The sole question before this Court in this case is whether a ticket for the transportation of the libellants on the British steamship "Kensington" from Antwerp, Belgium, to the port of New York, Claimant's Exhibit "A" (folios 201–219), is a contract or a mere voucher.

The libellants contend that the ticket is a voucher, while the claimant contends and the District Court and Circuit Court of Appeals held that it is a contract.

The ticket contains the following clause:

(*d*) "The ship-owner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in

advance on the excess value at the rate of 1% or its equivalent, in which case the ship-owner shall only be responsible according to the terms of the ship-owner's form of cargo bill of lading, in use from the port of departure."

If the ticket is a contract this clause, printed on the face of it over the agent's signature, is binding upon the libellants.

If the ticket is a mere voucher, this clause is a notice or regulation not binding upon the libellants unless reasonable and actually or constructively brought to their notice.

FIRST POINT.

The First and Second Assignments of Error, being in general terms to the effect that the decree below is wrong and should be reversed, will not be considered separately, because the reasons upon which they depend are to be found in the specific assignments hereinafter discussed.

SECOND POINT.

The Courts below were right in holding that the passage ticket in question was a contract; that the limitation of the amount of the carrier's liability contained in it was binding upon the libellants; that such a limitation is not against public policy; and that the ticket should be admitted in evidence (Third, Fourth, Fifth and Tenth Assignments of Error.)

The Court will notice that both the District Judge before whom the ticket itself was in evidence and the Circuit Court of Appeals have found that the clause limiting the amount of the carrier's liability was printed on the face of the ticket over the signature of the agent in type which, though somewhat smaller than the preceding type, was perfectly clear and legible.

Judge Brown, of the District Court, said (at folio 232):

> "In the body of the ticket, under the head of 'Notice to Passengers,' it is stated as follows:
> 'It is a condition upon which this ticket is granted and is mutually agreed, for the consideration aforesaid, that' * * * Here follow ten paragraphs in type somewhat smaller than the preceding type, but perfectly clear and legible, stating numerous conditions."

Judge Lacombe, in the Circuit Court of Appeals, said (fol. 308):

> "The ticket, which is dated December 2, 1897, begins with a recital of the names of the passengers and numbers of staterooms and berths, and states that it 'is good for second cabin passage of the persons named in the margin * * * by the British steamship Kensington from Antwerp on the 11th of December * * * unless prevented from unforeseen circumstances, with 20 cubic feet of personal baggage for each adult passenger, free of charge, excess being charged for at the rate of 125 francs per cubic foot.' Immediately succeeding is the caption, 'Notice to Passengers,' and these words: 'It is a condition upon which this ticket is granted and it is mutually agreed for the consideration aforesaid, that—— Here, as the District Judge finds, follows ten paragraphs in type somewhat smaller than the preceding type, but perfectly clear and legible, stating numerous conditions."

This Court, in the case of the "*Majestic*," 166 U. S., p. 375, had under consideration a ticket of the White Star

Line, upon *the front* of which there was an agreement of transportation over the signature of the agent, and on the *back* of which there was a notice to passengers in seven different paragraphs, one of which was passed upon by the Court. This Court, in a most unmistakable way, held that what was printed on the face of the ticket over the signature of the agent was a contract; whereas, what was printed on the back of the ticket was a mere notice, and therefore not a part of the contract. The whole discussion of the claim by this Court was as a notice or regulation. The opinion begins with these words:

> "By *the contract* in this case the Steamship Company agreed to land libellants with their luggage at the port of New York, and none of the alleged exceptions or conditions were referred to therein. They were notices and nothing more, and it cannot be held as matter of law that whether they were regulations for the conduct of business or limitations upon common law obligations they constituted any part of *the contract*."

The italics are ours.

Accordingly the provision relied upon by the claimant in this case should be taken to be a part of the contract, and therefore the question of its reasonableness, provided only that it is not against public policy, does not arise at all. It is sufficient that the parties have agreed to it.

That it is not against public policy has been decided by this Court after most careful consideration in the case of *Hart* vs. *Pennsylvania Railroad Company*, 112 U. S., 331, where it was held that though a common carrier cannot exempt himself from liability for negligence, yet he may fix a value upon the property carried and limit the amount of his liability to that value, especially if the rate of freight is made proportionate to the value. It resulted in that case that the shipper's offer to show that his actual loss was $25,000, whereas under the contract he was entitled

to receive but $1,200, was excluded. This is precisely the arrangement that is made in the clause now before the Court; the baggage is carried free provided it is valued at 250 francs. But if the passenger wishes it to be carried at a greater value, then he must pay freight at the rate of one per cent. on the excess value over 250 francs. Accordingly, this clause is not an exemption of the carrier from liability for his own negligence, and so against public policy, but is a means of fixing the amount of his liability and protecting him from exaggerated claims, which is quite consistent with public policy.

It must be admitted that the case of *Richardson, Spence & Co.* vs. *Rowntree*, 1894, Appeal Cases, 217, is not consistent with what we have said nor with the *ratio decidendi* in the case of the "*Majestic.*" It may fairly be described as at least an insufficiently considered case. The Law Lords decided it upon the strength of two prior decisions.

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The stipulations which were relied upon by the defendants in those cases were printed upon the back, in the one case upon a steamer ticket which had on it merely "Dublin to Whitehaven," and in the other on a receipt for luggage which was deposited in the luggage office of a railroad company. There was absolutely no ground for saying that what was printed on the face of either of these instruments was the contract between the parties, or that what was printed on the back was a part of what was printed on the face. The House of Lords seems to hold in the *Richardson* case that no instrument drawn by one man and given to another can be a contract unless its provisions have been called to the attention of the party who did not

prepare it. Of course, we know this is not so in the case of bills of lading and policies of insurance. Whether such an instrument is or is not a contract depends chiefly upon its terms. It is true that most railroad tickets and some steamship tickets, as in the *Henderson* case, are mere vouchers. A ticket for ocean transportation, however, is a much more important document; it is a transaction into which people enter with care, and no Transatlantic steamship ticket, as far as we know, is drawn as a voucher. In the ticket now under consideration, above the signature of the agent are contained all the provisions applicable to the transportation, and in its very last clause it is described as a contract. This was the view taken of the ticket of the Cunard Steamship Company in the case of *Fonseca* vs. *The Steamship Co.*, 153 Mass., 553, and by the Court of Appeals of the State of New York in a ticket of a company which was the predecessor of the carrier now before this Court. *Steers* vs. *The Liverpool & N. Y. SS. Co.*, 57 N. Y., 1. Unless some fraud or deception or concealment is practiced the party accepting such a document is bound by its terms.

It will be observed that the *Richardson* case involved a claim for personal injuries as to which the amount of the company's liability was restricted to $100. Personal injuries may be anything—from a slight, painless bruise to a painful permanent disability, and neither party could possibly foretell what injury was going to be sustained; whereas the passenger could tell exactly what the value of his baggage was and arrange to have it carried at that value. And the ticket contained no provision, as in the clause now under consideration, whereby upon payment of a greater sum the company's liability for permanent injuries could be proportionately increased.

The condition of the law on this point in England is certainly in an unsatisfactory state. *Sir Frederick Pol-*

lock, in the 6th edition (August, 1894,) of his work on the Law on Contracts, speaking of the law of England, and citing among other cases *Richardson* vs. *Rowntree*, says:

> "The result, as it stands at present, appears to be that it is a question of fact whether the notice given in each case was reasonably sufficient to inform the party receiving it at the time of making the contract that the party giving it intended to contract only on special terms. A person who, knowing this, enters into the contract, is then deemed to assent to the special terms; but this again is probably subject to an implied condition that the terms are relevant and reasonable. It cannot be said that the subject is yet free from doubt."

In the *Fonseca* case, *supra*, the Court said, *inter alia*:

> "The principal question before us is whether the plaintiff, by reason of his acceptance and use of his ticket, shall be conclusively held to have assented to its terms. It has often been decided that one who accepts a contract and proceeds to avail himself of its provisions, is bound by the stipulations and conditions expressed in it, whether he reads them or not. (Rice *vs.* Dwight Mfg. Co., 2 Cush., 80; Grace *vs.* Adams, 100 Mass., 505; Hoadley *vs.* North Trans. Co., 115 Mass., 304; Monitor Ins. Co. *vs.* Buffum, 115 Mass., 343; Germania Ins. Co. *vs.* Memphis R.R., 72 N. Y., 90.) This rule is as applicable to contracts for the carriage of persons or property as to contracts of any other kind. (Grace *vs.* Adams, 100 Mass., 505; B. & M. R.R. *vs.* Chipman, 146 Mass., 107; Parker *vs.* S. E. R.R., 2 C. P. D., 416, 428; Harris *vs.* Great West R.R., 1 Q. B. D., 515; York Co. *vs.* Central R.R., 3 Wall., 107; Hill *vs.* Syracuse R.R., 73 N. Y., 351.) The cases in which it is held that one who receives a ticket that appears to be a mere check showing the points between which he is entitled to be carried, and that contains conditions on its back which he does not read, is not bound by such conditions, do not fall within this rule. (Brown *vs.* E. R.R., 11

Cush., 97; Malone *vs.* Boston R.R., 12 Gray, 388; Henderson *vs.* Stevenson, L. R. 2, H. L. Sc., 470; Quimby *vs.* Vanderbilt, 17 N. Y., 306; R.R. *vs.* Stevens, 95 U. S., 655.) Such a ticket does not purport to be a contract which expressly states the rights of the parties, but only a check to indicate the route over which the passenger is to be carried, and he is not expected to examine it to see whether it contains any unusual stipulations. The precise question in the present case is whether the 'contract ticket' was of such a kind that the passenger taking it should have understood that it was a contract containing stipulations which would determine the rights of the parties in reference to his carriage. If so he would be expected to read it, and if he failed to do so he is bound by its stipulations. It covered with print and writing the greater part of two large quarto pages and bore the signature of the defendant company affixed by its agent, with a blank space for the signature of the passenger. The fact that it was not signed by the plaintiff was immaterial. (*Quimby* vs. *Boston & Maine R.R.*, 150 Mass., 365 and cases there cited.) It contained elaborate provisions in regard to the rights of the passengers on the voyage, and even went into such detail as to give the bill of fare for each meal in the day for every day in the week. No one who could read could glance on it without seeing that it undertook expressly to prescribe the particulars which would govern the conduct of the parties until the passenger reached the port of destination. In that particular it was entirely unlike the pasteboard tickets which are commonly sold to passengers on railroads. In reference to this question, the same rules of law apply to a contract to carry a passenger as to a contract for the transportation of goods. There is no reason why the consignor who is bound by the provisions of a bill of lading which he accepts without reading should not be equally bound by the terms of a contract in similar form to receive and transport him as a passenger."

And the Court of Appeals of New York in the *Steers* case, *supra*, said:

"In the case of *Belger* vs. *Dinsmore* (51 N. Y., 166), it was decided that in the absence of fraud, concealment or improper practice, the legal presumption is that stipulations limiting the common law liability of common carriers, contained in a receipt given by them for freight, were known and assented to by the party receiving it. In that case the decision in *Blossom* vs. *Dodd* (43 N. Y., 264) was examined and shown to be entirely consistent with the conclusion arrived at. I do not perceive any distinction growing out of the fact, that in the case before us the subject was the transportation of a passenger and her baggage, which can render the decision inapplicable. The plaintiff, by her agent, was an applicant for a passage to Europe by the defendant's ship, the voyage to be commenced at a future day, and received on payment of the price a written engagement from the defendant expressing its undertaking. A printed *fac-simile* of this paper is before us, and although part of it is in smaller type than the rest, no part of it is in such type as to suggest to the mind the idea of concealment as the possible motive for its being thus printed. It is all printed on one side of the paper, and all the printed matter precedes the signature of the agent of the defendant. That the plaintiff herself never read the paper is of no moment. The arrangement was made by her agent, who must be presumed to have acquainted himself with the terms of the engagement which the defendant assented to. Looking to the course of business, the Court may take notice that an engagement for a voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an express company's receipt for baggage or for freight. There is, therefore, no room in such a case for the suggestion that the party is surprised into a contract, when he supposes himself only to be taking a token indicative of his right. The paper in evidence ought, therefore, to be regarded as having received the mutual assent of the parties, and as be-

ing, as its language purports, their contract touching the voyage in question."

This ticket belongs to a class of unilateral contracts of which there are many in use, viz.: Bills of lading, blanks for telegraph messages and policies of insurance. We can conceive no reason why the holder of either of these documents is bound without reading or knowing its provisions when he took it; and yet the holder of a ticket for transportation across the ocean is not. In truth the transaction of business would be greatly embarrassed by such a ruling, because the carrier, though offering a contract in its nature reasonable, would find that his rights depended upon whether the purchaser of the contract was literate or illiterate, or was a foreigner who could not understand the language; and would be greatly exposed to unconscientious claims, because he never could prove that the holder had read, or if he had read had understood, the provisions of the contract. Must the carrier print for the foreigner in his own language or translate the English to him, read to the uneducated, and, when all is done, be at the risk of being misunderstood?

There is no conflict between the law as laid down by the Circuit Court of Appeals and the law as laid down in the courts of the State of New York on this subject.

The *Steers* case, *supra*, was cited with approval by the Court of Appeals in the case of *Zimmer* vs. *The New York Central and Hudson River Railroad Co.*, 137 N. Y., at p. 463, where Gray, *J.*, speaking of a live-stock contract which valued a horse at one hundred dollars, said:

> "In this case the contract did not exempt the company from liability for the negligence which, as we must assume, occasioned the loss of the horse. That occurred through none of the causes particularly specified in the contract, and nothing precluded the plaintiff from recovering upon the negligence proven; but the amount of his recovery was limited by the

contract to the amount of one hundred dollars. That the plaintiff did not know of the terms of this contract, is of no consequence. Coolidge was his agent, and will be presumed to have known and to have assented to the stipulation in the contract, which limited the general liability of the carrier. *Belger* vs. *Dinsmore*, 51 N. Y., 166; *Steers* vs. *Steamship Co.*, 57 *id.*, 1."

The case of *Glovinsky* vs. *The Cunard Steamship Co.*, 4 N. Y. Misc. Rep., 266, is an opinion of the General Term of the City Court of New York, a court whose jurisdiction is restricted to claims not amounting to more than two thousand dollars, and which it is presumed could not have intended to overrule the Court of Appeals. The case is very badly reported. There is nothing to show whether the clause which was under discussion was on the face or the back of the ticket, whether it was a part of the contract, or a pure and simple notice. Upon appeal to the General Term of the Court of Common Pleas, 6 Misc., 388, the case was affirmed upon an entirely different ground, viz., that the parties had made an independent parol contract in no way connected with the contract of transportation contained in the ticket.

THIRD POINT.

The Courts below were right in holding that the clause in the contract of transportation limiting the amount of the carrier's liability applied to the Steamship Kensington, which was the carrier's property. (Sixth and Seventh Assignments of Error.)

No one who reads this clause can be in any doubt that it was intended to apply to the shipowner and his prop-

erty as well. The agent is separately mentioned because, having signed the contract, he might be personally liable. It is not to be inferred from this that it was intended to leave the shipowner's property liable. No doubt, contracts can be made whereby a man is relieved from liability, and yet all his property, or a particular piece of his property, subjected to it; but precise and unmistakable language would be required to produce so singular a result. To read the clause of the contract in this way would not be to construe it, but to nullify it. An exemption of the shipowner would be perfectly valueless if his vessel is subjected for the same claim to a maritime lien. A lien arises in the case of a maritime contract only as an incident of personal liability of the contractor, and if his personal liability be released, it stands to reason that the lien is. Could it, for instance, be contended that if these passengers had executed a release to the Steamship Company, for a valuable consideration, without mentioning the steamship, that they could then prosecute the same claim against the vessel? When the parties have agreed that for any particular claim the contractor shall not be liable, obviously his property cannot be liable for it. The whole contains the parts.

As *Judge Bradley* said, in the case of the *City of Norwich, 118 U. S., at p. 503:*

> "To say that an owner is not liable, but that his vessel is liable, seems to us like talking in riddles. A man's liability for a demand against him is measured by the amount of property that may be taken from him to satisfy that demand. In the matter of liability, a man and his property cannot be separated, unless where, for public reasons, the law exempts particular kinds of property from seizure, such as the tools of a mechanic, the homestead of a family, etc. His property is what those who deal with him rely on for the fulfilment of his obligations. Personal arrest

and restraint, when resorted to, are merely means of getting at his property. Certain parts of his property may become solely and exclusively liable for certain demands, as a ship bound in bottomry, or subject to seizure for contraband cargo or illegal trade; and it may even be called the 'guilty thing'; but the liability of the thing is so exactly the owner's liability, that a discharge or pardon extended to him will operate as a release of his property. It is true, that in *United States* vs. *Mason*, 6 Bissell, 350, it was held that in a proceeding *in rem* for a forfeiture of goods, the owner might be compelled to testify, because the suit is not against him but against the goods. That decision, however, was disapproved by this Court in the case of *Boyd* vs. *United States*, 116 U. S., 616, 637, in which it is said: 'Nor can we assent to the proposition that the proceeding (*in rem*) is not, in effect, a proceeding against the owner of the property as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited. In the words of a great Judge, "Goods, as goods, cannot offend, forfeit, unlade, pay duties, or the like, but men whose goods they are." Vaughan, *C. J.*, in *Sheppard* vs. *Gosnold*, Vaughan, 159, 172; approved by Ch. Baron Parker in *Mitchell* vs. *Torup*, Parker, 227, 236.' "

FOURTH POINT.

The Courts below were right in holding that the Harter Act does not apply to passengers' baggage. (Eighth Assignment of Error.)

The ticket in this case certainly does not fall within the words "bill of lading or shipping document," used in Sections 1, 2, and 4 of the Harter Act. These are expressions perfectly well understood in commerce, and apply

to bills of lading covering trade shipments, which are almost invariably insured. That Congress meant by the words "bill of lading or shipping document" but one thing, namely, bill of lading, appears from the language of Section 5, which provides a penalty for refusing to issue on demand "the bill of lading herein provided for," and does not mention the words "shipping document" at all.

On the other hand, for personal baggage accompanying the passenger no bill of lading or shipping document is, so far as we know, ever given. If the libellants had intended their personal baggage to fall within the provisions of the Harter Act, they could have accomplished it, as provided in the ticket itself, by declaring the value of the baggage over 250 francs, paying freight on the excess and getting a bill of lading. Not having done so, it remains baggage, and it does not lie in their mouths now to say that it is property or merchandise within the meaning of the Harter Act.

If the Harter Act did apply, there is nothing in it preventing the parties from agreeing upon the value of goods carried.

FIFTH POINT.

The Courts below were right in excluding testimony as to the amount of damage to the libellants' baggage. (Tenth Assignment of Error.)

It is the practice in the Federal courts of the Second Circuit, and, as we suppose, of all the other Circuits, to confine the testimony at the hearing of causes to the merits. All questions of amount of damage are, after the

decision on the merits, referred for ascertainment to commissioners appointed by the Court.

Upon the question whether the claimant in this case was liable to the libellants, the exact amount of damage which they sustained was perfectly irrelevant. If the claimant were held not liable, it would be mere loss of time to go into the particulars of the damage; if it were held liable, the proper tribunal for ascertaining the damage in the first instance would be a commissioner to be appointed by the Court.

SIXTH POINT.

The Courts below were right in holding that the receipt which the libellants received for their baggage was admissible in evidence. (Eleventh Assignment of Error.)

It was a distinct document, part of the *res gesta*, and it showed that the company received the baggage subject to the conditions contained in its ticket and bill of lading. The reference to the bill of lading was in order to cover the case of passengers declaring the value of their baggage to be over two hundred and fifty francs and paying one per cent. as freight on the value in excess of that amount. It is perfectly consistent with the terms of the ticket. The company does not know the value of the baggage, but if it is carried under the ticket its agreed value is two hundred and fifty francs. If the passenger wishes to have it carried at a larger value he must declare the value over two hundred and fifty francs and pay freight thereon at the rate of one per cent. It is difficult to imagine a fairer arrangement.

SEVENTH POINT.

The admission of the deposition of Maurice de Cock was right, but any question about it on this appeal, is immaterial. (Twelfth and Thirteenth Assignments of Error.)

The real object of this deposition was to show that the carrier was not liable to the libellants at all, because of certain clauses in the ticket exempting it from liability for its own negligence which were valid by the law of Belgium, where the contract was entered into, and subject to which law the contract was expressly made. But both the courts below decided against the claimant upon this point, and the claimant has not appealed. Therefore the admission of the deposition, even if erroneous, was harmless to the appellants and cannot be made a ground for reversing the decree of the court below.

It is true that the witness was also asked whether the clause limiting the amount of the carrier's liability was valid by and enforcible under the law of Belgium; but such a provision in the contract being consistent with our own public policy, the burden of showing that the law of Belgium is different lies upon the libellants, and therefore the claimant needs no proof on the subject at all.

HENRY GALBRAITH WARD,
Of Counsel for Claimant-Appellee.

Supreme Court of the United States.

No. 15.—October Term, 1901.

The Kensington. } On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[January 6, 1902.]

The libel by which this action was commenced sought to recover the value of passengers' baggage which it was alleged the ship had wrongfully failed to deliver. The facts essential to be borne in mind in order to approach the questions arising for decision are as follows:

The International Navigation Company, a New Jersey corporation, on December 6, 1897, at the office of its Paris agency, issued to Mrs. and Miss Bleecker, the wife and daughter of an officer of the United States Navy, a steamer ticket for a voyage from Antwerp to New York on the Kensington, a steamer in the control of the company, advertised to sail from Antwerp on December the 11th. The ticket was delivered to Mrs. Bleecker, who at the time made part payment of the passage money. The baggage of the two passengers was shipped by rail to Antwerp, to the care of the agent of the company there. Mrs. Bleecker, at Antwerp, on the 10th of December, paid the remainder of the passage money, and it was entered on the ticket. The baggage having in the meanwhile been received, the charges which the agent at Antwerp had advanced were refunded and a receipt was issued. It was stated therein that the value of the baggage was unknown, and that it was shipped subject to the conditions contained in the company's steamer ticket and bill of lading. Mrs. Bleecker and her daughter embarked, and the steamer sailed on the 11th of December. The ticket was subsequently taken up by the purser.

The baggage was stowed in what was known as number 2, upper steerage deck. The voyage was an exceptionally rough one, the ship encountering heavy seas and winds, rolled from thirty-eight to forty-five degrees on either side during the height of the gale, and was obliged to heave to for about fifteen hours. On arrival at New York the baggage was found to be totally destroyed. By constant shifting it had been reduced to an almost unrecognizable mass, was commingled with debris of broken china and straw, and covered with water. The first was occasioned by stowing crates of china in the same compartment. The presence of the water was explained by the fact that an exhaust pipe which passed through the compartment had been broken by the shifting of the contents of the compartment, and hence the exhaust escaped into the compartment.

There is no possible view which can be taken of the facts by which the loss of the baggage was brought about by which the ship could be held responsible if the steamer ticket was in and of itself a complete contract, and all the conditions or exceptions legibly printed on the face thereof were lawful. The ticket was signed by the agent of the company at Paris, was countersigned by the agent at Antwerp, but was not signed by either Mrs. Bleecker or her daughter. One of the conditions printed on the ticket provided that there should be no liability to each passenger, "under any circumstances," beyond the sum of 250 francs, "at which such baggage is hereby valued," unless an increased value be declared and an additional sum paid as provided by the condition.

There was no proof tending to show that at the time the ticket was issued the attention of Mrs. Bleecker or her daughter was called to the fact that it embodied exceptional stipulations, relieving the company from liability, or that such conditions were agreed to, except in so far as a meeting of minds on the subject may be inferred from the fact of the delivery of the ticket by the company, and its acceptance, and that it contained on its face, in small but legible type, among others, the stipulations which are relied upon. The testimony of Mrs. Bleecker and her daughter was that when the ticket was received it was put aside without reading it, and that it was not subsequently examined before it was delivered to the ship's officer. The District Court held that the loss of the baggage was attributable to bad stowage; that the ticket and the conditions printed on it were a contract binding upon the parties, so far as the conditions were lawful. The conditions generally relieving from liability for negligence were held to be void, but the stipulation as to the value of the baggage was held valid; recovery was allowed only for the equivalent of 250 francs to each. (88 Fed. Rep. 331.)

On appeal, the Circuit Court of Appeals for the Second Circuit affirmed the judgment. (94 Fed. Rep. 885.)

The case by the allowance of a writ of certiorari is here for review.

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The District Court held, although the condition of the weather might account for the shifting of the baggage, that result could also have arisen from its bad stowage, and in the absence of all proof by the ship that the baggage had been properly stowed, when such proof was peculiarly within its reach, the loss must be presumed to have arisen from the imperfect stowage. The Circuit Court of Appeals, whilst in effect agreeing to this conclusion, in addition found that there was proof in the record tending to sustain the conclusion that the baggage had been improperly stowed,

and that no proof even tending to rebut this testimony had been offered by the company. As in the argument at bar the conclusion of the court below on this subject was not seriously questioned, we content ourselves with saying that as a matter of fact we find them to be sustained, and therefore pass from their further consideration.

The loss of the baggage being then attributable to improper stowage, the question is, Was the vessel relieved from the consequence of its fault by the exceptions contained in the passenger ticket? The District Court decided "that a ticket of the character described for a transatlantic passage is a unilateral contract, and, like a bill of lading, is binding upon the person who receives it, so far as its provisions are reasonable and valid." In other words, the court held, although there was no proof of the meeting of the minds of the parties upon the subject of exceptional limitations to be imposed upon the contract of carriage, the receipt and retention of the ticket implied a unilateral contract embracing the exceptions found in legible characters on the face of the ticket. And being thus a part of the express and written contract, the exceptions would be enforced provided they were just and reasonable. The Circuit Court of Appeals in effect approved these views of the District Court.

Whilst apparently the question whether there was a unilateral contract necessarily arises first for consideration, such is not the case when the situation of the record is taken into view. For should we, in disposing of this question, determine that the rulings of the court below as to the unilateral contract were correct, we would not thereby be relieved from deciding whether the conditions embodied in the contract were valid. On the other hand, should we conclude that the conditions relied on were void, there will be no occasion to determine the question of contract. We hence invert the logical order of consideration, and first come to determine whether the conditions enumerated in the ticket relieved from the responsibility otherwise resulting from the bad stowage of the baggage. In doing so we shall, of course, assume, for the purpose of this branch of the case only, that the conditions relied upon were a part of a unilateral contract, and were binding as far as they were just and reasonable. It is apparent if the carrier, in transporting the baggage, was governed by the act of February 13, 1893, designated as the Harter Act, any provision in the ticket exempting from liability for fault in loading or stowage was void because inhibited by the express provisions of the statute. (27 Stat. 445.) As, however, the view which we take of the conditions expressed in the ticket will be equally decisive, whether or not the Harter Act concerns the carriage of passengers and their baggage, it becomes unnecessary to intimate any opinion as to whether the provisions of the act in question apply to such contracts. The exceptions found on the face of the ticket upon which the carrier depends are as follows:

"(*c.*) The shipowner or agent are not under any circumstances liable for loss, death, injury or delay to the passenger or his baggage arising from the act of God, the public enemies, fire, robbers, thieves of whatever kind, whether on board the steamer or not, perils of the seas, rivers or navigation, accidents to or of machinery, boilers or steam, collisions, strikes, arrest or restraint of princes, courts of law, rulers or people, or from any act, neglect or default of the shipowner's servants, whether on board the steamer or not, or on board any other vessel belonging to the shipowner, either in matters aforesaid or otherwise howsoever. Neither the shipowner nor the agent is under any circumstances, or for any cause whatever or however arising, liable to an amount exceeding 250 francs for death, injury or delay of or to any passenger carried under this ticket. The shipowner will use all reasonable means to send the steamer to sea in a seaworthy state and well-found, but does not warrant her seaworthiness.

"(*d.*) The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passengers' baggage carried under this ticket beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of one per cent, or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading, in use from the port of departure."

It is settled in the courts of the United States that exemptions limiting carriers from responsibility for the negligence of themselves or their servants are both unjust and unreasonable, and will be deemed as wanting in the element of voluntary assent; and, besides, that such conditions are in conflict with public policy. This doctrine was announced so long ago, and has been so frequently reiterated, that it is elementary. We content ourselves with referring to the cases of the *Baltimore & Ohio &c Railway* v. *Voigt*, (176 U. S. 498, 505, 507,) and *Knott* v. *Botany Mills*, (179 U. S. 69, 71,) where the previously adjudged cases are referred to and the principles by them expounded are restated.

True it is that by the act of February 13, 1893, (27 Stat. 445,) known as the Harter Act, already adverted to, the general rule just above stated was modified so as to exempt vessels, when engaged in the classes of carriage coming within the terms of the statute, from liability for negligence in certain particulars. But whilst this statute changed the general rule in cases which the act embraced, it left such rule in all other cases unimpaired. Indeed, in view of the well-settled nature of the general rule at the time the statute was adopted, it must result that legislative approval was by clear implication given to the general rule as then existing in all cases where it was not changed.

Testing the exemptions found in the ticket by the rule of public policy, it is apparent that they were void, since they unequivocally sought to relieve the carrier from the initial duty of furnishing a seaworthy vessel for all

neglect in loading or stowing, and indeed for any and every fault of commission or omission on the part of the carrier or his servants. And seeking to accomplish these results, it is equally plain that the conditions were void if their legality be considered solely with reference to the modifications of the general rule created by the act of 1893. (*Knott* v. *Botany Mills, supra.*) As, however, the ticket was finally countersigned in Belgium, and one of the conditions printed on its face provides that "all questions arising hereunder are to be settled according to the Belgium law, with reference to which this contract is made," it is insisted that such law should be applied, as proof was offered showing that the law of Belgium authorized the conditions. The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity or by the will of contracting parties can the public policy of a country be set at naught. (Story, Conflict of Laws, §§ 38, 244.) Whilst as said in *Knott* v. *Botany Mills*, the previous decisions of this court have not called for the application of the rule of public policy to the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this court. In *Liverpool & Great Western Steam Co.* v. *Phoenix Insurance Co.*, (129 U. S. 397,) the question arose, whether conditions, exempting a carrier from responsibility for loss caused by the neglect of himself, or his servants, could be enforced in the courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions, exempting from responsibility for loss, arising from negligence, were valid, by the laws of New York, and would have been upheld in the courts of that State, it was decided that, in view of the rule of public policy applied by the courts of the United States, effect would not be given to the conditions. In the very nature of things, the premise, upon which this decision must rest, is controlling here, unless it be said that a contract, made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the courts of the United States, than would be a similar contract, validly made, in one of the States of the Union. Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is com-

mitted in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guild Hall*, (58 Fed. Rep. 796,) it was held that a stipulation in a bill of lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the courts of the United States, although such a condition was valid under the law of Holland. In *The Glenmavis*, (69 Fed. Rep. 472,) the same rule was applied to a bill of lading issued in Germany by a British ship for goods consigned to Philadelphia. Indeed by implication the question is controlled by statute. We have previously pointed out, under the assumption that the Harter Act does not apply to the carriage of the baggage of a passenger, that such law, in effect, affirms the rule of public policy as previously existing in the cases, where no change was made. But that act expressly prohibits carriers, engaged in the business which it regulates, from contracting, even in a foreign country, for a shipment to the United States to relieve themselves from negligence in cases where the statute does not do so. (*Knott* v. *Botany Mills, ub. sup.*) The theory then, by which alone the conditions relied on in this case can be enforced despite the public policy which governs, in the courts of the United States, reduces itself to this: Carriers who transact a class of business where they are exempt by law, in many cases, from the consequences of the neglect of themselves, or their servants, may not overthrow public policy by contracts made in a foreign country for a shipment to the United States, but carriers who are in no case exempt by the law from the consequence of their neglect may do so. But this amounts in last analyses to this: The lesser the immunity from negligence the greater the power to avoid the consequences of negligence.

The general exemptions, from responsibility for negligence which the ticket embodies being controlled by the rule enforced in the courts of the United States, and being therefore void, because against public policy, we come to consider the particular provisions contained in the ticket with reference to the value of the baggage and the limit of recovery, if any, arising therefrom.

In *Railroad Company* v. *Fraloff*, (100 U. S. 24, 27,) it was said:

"It is undoubtedly competent for carriers of passengers, by specific regulations, distinctly brought to the knowledge of the passenger, which are reasonable in their character and not inconsistent with any statute or their duties to the public, to protect themselves against liability, as insurers, for baggage exceeding a fixed amount in value, except upon additional compensation, proportioned to the risk. And in order that such regulations may be practically effective, and the carrier advised of the

full extent of its responsibility, and, consequently, of the degree of precaution necessary upon its part, it may rightfully require, as a condition precedent to any contract for the transportation of baggage, information from the passenger as to its value; and if the value thus disclosed exceeds that which the passenger may reasonably demand to be transported as baggage without extra compensation, the carrier, at its option, can make such additional charge as the risk fairly justifies."

In *Hart* v. *Pennsylvania R. R. Co.*, (112 U. S. 331,) the facts were as follows: A bill of lading was issued for a number of horses, and the instrument was signed, not only by the carrier, but also by the shipper. By the express provisions of the bill of lading the right to recover for each horse was limited to a specified sum. The horses were injured while in transit by the neglect of the employes of the company, and recovery was sought for a much larger amount than the value fixed in the bill of lading. The court, in its opinion, stated that it must be assumed that the rate of freight and the declared valuation had a due relation one to the other, and that if a greater value had been declared a higher and not unreasonable charge for the carriage would have been made. It was conceded that the carrier was liable for the value of the horses as stated in the bill of lading, but the controversy was whether the limit affixed in the bill of lading should not be disregarded and a much larger sum, which it was asserted was the actual value of the horses, be awarded on the ground that the loss was begotten through the negligence of the carrier. The court, after reviewing the prior cases and explicitly reaffirming the doctrine that conditions were void, because against public policy, by which a carrier was relieved from the consequences of the negligence of himself or his servants, said (p. 340):

"The limitation as to the value has no tendency to exempt from liability for negligence. It does not induce want of care. It exacts from the carrier the measure of care due to the value agreed on. The carrier is bound to respond in that value for negligence. The compensation for carriage is based on that value. The shipper is estopped from saying that the value is greater. The articles have no greater value, for the purposes of the contract of transportation, between the parties to that contract. The carrier must respond for negligence up to that value. It is just and reasonable that such a contract, fairly entered into and where there is no deceit practiced on the shipper, should be upheld. There is no violation of public policy. On the contrary, it would be unjust and unreasonable, and would be repugnant to the soundest principles of fair dealing and of the freedom of contracting, and thus in conflict with public policy, if a shipper should be allowed to reap the benefit of the contract if there is no loss, and to repudiate it in case of loss."

It was decided that the carrier was responsible, but his liability was limited to the value expressly agreed upon in the bill of lading. Did the conditions in the steamer ticket in the case at bar come within the principle announced in either of the foregoing cases?

One of the conditions reiterated in various forms, in the bill of lading, is as follows:

"The shipowner or agent shall not under any circumstances be liable for any loss or delay of or injury to passenger's baggage carried under the ticket, beyond the sum of 250 francs, at which such baggage is hereby valued, unless a bill of lading or receipt be given therefor and freight paid in advance on the excess value at the rate of 1 per cent, or its equivalent, in which case the shipowner shall only be responsible according to the terms of the shipowner's form of cargo bill of lading in use from the port of departure."

The requirement, then, was that the baggage of the passenger must be valued at 250 francs, and no more than that sum could be recovered under any circumstances, unless any excess of amount be declared and a named percentage on the increased value be paid, and unless the passenger agreed to ship his baggage as cargo and take a bill of lading for it. Now the only theory upon which it can be assumed that the law of 1893, the Harter Act, does not apply to the carriage of the baggage of a passenger, is that the statute in question only relates to merchandise shipped as cargo and for which a bill of lading is taken. The requirement, therefore, if the passenger desired to value his baggage at a greater sum than 250 francs, was that he must ship it in such a manner as to bring it within the terms of the Harter Act. This obvious meaning of the condition is stated and insisted on in the brief in behalf of the carrier, where it is said:

"The ticket in this case certainly does not fall within the words 'bill of lading or shipping document,' used in sections 1, 2 and 4 of the Harter Act. These are expressions perfectly well understood in commerce, and apply to bills of lading covering trade shipments, which are almost invariably insured. That Congress meant by the words 'bill of lading or shipping document' but one thing, namely, bill of lading, appears from the refusing to issue on demand 'the bill of lading herein provided for,' and does not mention the words 'shipping document' at all.

"On the other hand, for personal baggage accompanying the passenger no bill of lading or shipping document is, so far as we know, ever given. If the libellants had intended their personal baggage to fall within the provisions of the Harter Act, they could have accomplished it, as provided in the ticket itself, by declaring the value of the baggage over 250 francs, paying freight on the excess and getting a bill of lading."

The passenger then was subjected to the inevitable alternative of having no recourse whatever for his baggage beyond the value of 250 francs, unless he agreed that he would subject it to the Harter Act. But if that law was made applicable its provisions controlled, and therefore the carrier became entitled to all the benefits of the third section of the act, exempting from all loss or damage resulting from faults or errors in navigation or in the management of the vessel, and for other causes which are specified in the section in question. To make this exaction was consequently but in effect to demand that the passenger agree, as a prerequisite to any increased val-

nation of his baggage, to subject it to a risk of loss brought about by the negligence of the carrier, when otherwise the baggage would not have been submitted to risk arising from such neglect—an obvious requirement exempting the carrier from the consequences of his own negligence. On the other hand, if the assumption be indulged in that the baggage of the passenger was within the purview of the Harter Act, a stipulation embodied in another provision of the ticket, relieving the carrier under any and every circumstance from every conceivable neglect of his servants, "either in matters afore aid or otherwise howsoever," was a plain violation of the prohibitions contained in the second section of the Harter Act. It follows, if the Harter Act did not apply to the baggage of a passenger, the stipulation which compelled the passenger, if he wished to value his baggage, to agree to subject it to that act, was an illegal effort on the part of the carrier to relieve himself from liability for his negligence. If this result is escaped by treating the baggage of the passenger as within the scope of the Harter Act, then there are provisions found in the ticket which are void, because they contain stipulations for immunity from negligence which are in direct conflict with the prohibitions of that act. Indeed, the conditions contained in the ticket seem to have been devised—at all events, they lend themselves to the inference that they were devised—to so operate as to keep the baggage of the passenger outside of the scope of the Harter Act, in order to avoid the provisions of that act forbidding the insertion of certain conditions as to negligence, and that when this result was obtained to immediately secure the bringing of the passenger's baggage within the influence of the act for the purpose of enabling the carrier to enjoy the immunity from negligence which that act accords in certain cases. We think the conditions were unjust and unreasonable and void because in conflict with public policy. And if the considerations which have led us to this conclusion be for a moment put aside, it is far from clear that other conditions contained in the ticket would not, from another point of view, lead to the same result. In addition to the exaction with which the right to state an excess of value over 250 francs was burdened, the ticket contains a provision to the effect that, whatever be the value of the baggage, under no circumstances will the carrier be liable for the neglect of himself or his servants. Giving effect, then, to all the provisions of the ticket, it may be doubted whether it does not result from them that not only was the baggage when valued at 250 francs, but also when valued at any increased amount, subjected to any and every risk arising from the negligence of the carrier or his servants.

It remains only to consider whether, although the conditions found in the ticket be void because against public policy, recovery for the baggage lost must be limited to the sum of 250 francs because of the statement of

that amount in one of the provisions of the ticket. It is to be doubted whether in reason it can be said that the limit as fixed in the ticket can be separated from the context in which it is found, and be deemed to be an independent valuation fixed by the parties irrespective of the right to name an increased sum stated in the same provision of the ticket which contains the valuation. But if it can be treated as a separate valuation, unaccompanied by the conditions attached to it, and from which it takes its origin, then the question is this: Is it just and reasonable for a transatlantic carrier to put an absolute limit of 250 francs, about the equivalent of $50, as the value of the baggage of a cabin passenger, whether first or second class, and to refuse, except upon illegal conditions, to allow any greater sum to be carried as baggage? In *The Majestic*, (166 U. S. 378,) the liability of the ship for baggage was under consideration. No contention was made that the ticket was not a contract, but the question was whether the conditions printed on the back were a part of the assumed contract and, if so, were they valid. One of the conditions limited recovery to £10 for each passenger, unless a greater sum was declared and paid for. The right to declare the larger value was not burdened with the illegal condition found in the ticket now under consideration. Had it been otherwise, the requirement would not have had the same significance, as the ticket considered in the Majestic was issued prior to the adoption of the Harter Act, and, therefore, whether the baggage was carried as such, or as cargo, it would have equally enjoyed an immunity from loss, brought about by the negligence of the carrier, or his servants. The ticket considered, in the Majestic, as does the one now before us, allowed a capacity of "twenty cubical feet of luggage for each person." The court, in the Majestic, commenting on the restriction to £10 for each passenger, said it was a (p. 386) "limitation which, we must say, does not strike us as exactly reasonable, in view of the 'twenty cubical feet of luggage which the company had expressly contracted to carry.' . . ." It was decided, in the Majestic, that, even on the hypotheses of a contract, evidenced by the ticket, the conditions on the back were not binding. The present case does not require us to decide whether the sum of 250 francs would be a reasonable limit if the right to fix a larger amount was not encumbered with the illegal and arbitrary conditions which are here presented. We express no opinion on such question. Manifestly, what is a reasonable maximum amount when a larger value is allowed to be carried as baggage by paying an additional compensation, is a different question from what is a reasonable amount where the right to declare and pay for a larger sum is refused, or what is equivalent thereto is permitted only upon condition that the passenger subjects himself to conditions which are void as against public policy. Indeed, the Circuit Court of Appeals adverted, in its opinion in this case, to the suggestion made

in the Majestic, and said that the limit of 250 francs was reasonable, because of the right given the passenger to increase the amount by paying a larger but reasonable compensation. As we hold that no such right was allowed because its enjoyment was burdened with conditions which were void because against public policy the only reason upon which the justness of the limit was sustained ceases to apply.

In view of the nature and duration of the voyage, of the circumstances which may be reasonably deemed to environ transatlantic cabin passengers, and the objects and purposes which it may also be justly assumed the persons who undertake such a voyage have in view, we think the arbitrary limitation of 250 francs to each passenger, unaccompanied by any right to increase the amount by an adequate and reasonable proportional payment, was void. It is therefore unnecessary to decide whether the ticket delivered and received, under circumstances disclosed by the record, gave rise to a contract embracing the exceptions to the carrier's liability, which were stated on the ticket. We intimate no opinion on the subject.

The decree below must be reversed and the cause remanded to the District Court with directions to ascertain the actual damage sustained by the libellants, and to enter a decree in their favor for the amount of such damages, with interest and costs.

And it is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.